[Shri Puttapaga Radhakrishna]

recent incident. The previous Civil Aviation Minister, Mr. Ashok Gehlot, once declared that Indira Gandhi International Airport would be started on 19th November this year and it would be named after Mrs. Gandhi, and that operations will start from this day. After some time, the International Airport Authority declared that they could not operate flights from it; of course, they can name the airport after Mrs. Gandhi from 19th November. They could not start the operations due to some technical difficulties, like non-supply of cement or steel. The Minister also declared after some time that flights could not be operated from 19th November but they could start the airport. But, surprisingly, the present Civil Aviation Minister has taken some disciplinary action against the Acting Chairman and some other member only because of their failure to complete the work on time. It was alleged that those persons were corrupt and were inefficient. Madam, we are not going to support any inefficiency; we are not supporting corruption. But they should not be made the victims due to some other factors. In this case particularly there are doubts in the minds of the employees and also the people that this disciplinary action was taken not because of their inefficiency or corruption but because they could not complete Indira Gandhi International Airport so that it could be operated from 19th November. Such things should not take place because this will demoralise the employees and will further damage efficiency in the administration. I am not going to oppose this Bill; I am supporting it, but I hope the Government will take all measures to increase efficiency in the Indian Airlines and Air India. Thank you.

THE DEPUTY CHAIRMAN: We now take up Short Duration Discussion.

3.00 P.M.

SHORT DURATION DISCUSSION

Re: Action taken or proposed to be taken by Government in the light of Supreme Court judgement relating to Indian Express Building Case

SHRI LAL K. ADVANI (Madhya Pradesh): Madam Deputy Chairman, I rise to raise a short-duration discussion on the action taken or proposed to be taken by the Government in the light of the Supreme Court judgement relating to the Indian Express building case.

Madam, I wish there had been no need whatsoever for Parliament to discuss this issue. In fact, after the 7th October judgement, which I regard as a historical landmark in India's judicial history, immediately thereafter, many expected that Mr. Jagmohan would voluntarily tender his resignation. If that had happened, there would have been no need whatsoever for this House or the other House to discuss this issue as to what action is proposed to be taken.

Obviously, when I refer to action proposed to be taken by the Government of India, I am referring to the action proposed to be taken at the Governmental level, Constitutional level. I know, so far as the issues between the lessor and the lessee are concerned, if there has been any breach of contractual obligations by one party or the other both the parties are free to go to the court. The Government is free to go to the court. The Indian Express also is free to go to the court, and claim damages, particularly, after this kind of judgement which has ben given by the Supreme Court. Therefore, I am not referring to that part of the action. I am referring to the part of the action which is expected from a Constitutional Authority and Constitutional functionary or anybody who can direct the Constitutional functionary to act in accordance with the

conventions and practices of a Constitutional democracy.

After all, there have been many precedents in the past, not one, but many. These precedents relate not merely to people who have voluntarily quit, because of adverse court verdicts, but even on the basis of verdicts, pronouncements of judicial commissions, whose status is obviously different from that of a court. In Kairon's case, in T. T. Krishnamachari's case, judicial commissions gave adverse verdicts, made adverse pronouncements. After all, the pronouncements made by judicial commissions are taken into consideration by the Government and the Government has to act upon it. By itself, it does not become law. It is not enforceable by itself. But even then, Mr. T. T. Krishnamachari....

SHRI MADAN BHATIA (Nominatted): Madam Deputy Chairman, on a point of order. I would like to remind the hon. Member because the hon. Member has referred to the reports of various judicial commissions. There was one commission appointed by the Government, known as the Shah Commission. Its report, its proceedings were set aside by the Delhi High Court as totally mala fide, unconstitutional and arbitrary.

SHRI LAL K. ADVANI: Is there any point of order? He is only endorsing what I said. I am aware that the pronouncements of judicial commissions do not have the kind of authority that a court verdict has. But I do not know of any Shah Commission's recommendations and report being held null and void....

SHRI MADAN BHATIA: This is surprising. He has been a Minister in the Janata Government to which the report was submitted. I do not know how the hon. Member is saying that he does not know about it.

SHRI LAL K. ADVANI: I know that. All that I am saying is that even verdicts and pronouncements of judicial commissions have been respected in the past by Ministers, by senior functionaries of Government. Of course, as far as court verdicts are concerned, there are precedents even for that. We know the case of Mr. Sanjiva Reddy. We know the case of Mr. Chenna Reddy. We know the recent case of Mr. Abdul Rahman Antulay who quit—whether they were privately advised by the authorities or not—following court verdicts. Now, the simple issue in this particular case is this. It is not the Indian Express versus the Government of India. It is not Goenka vs. Jag Mohan and it is not Sikandar Bakht vs. H. R. Bhardwaj.

THE MINISTER OF STATE IN THE MINISTRY OF LAW AND JUSTICE (SHRI H. R. BHARDWAJ): Sorry, sorry for the interruption, Advaniji. I was his counsel before he joined you. There is no Jag Mohan or Bhardwaj case.

SHRI LAL K. ADVANI: I am fully aware of it. I have gone through your entire speech.

SHRI H. R. BHARDWAJ: You came in power in 1967 in Delhi. You instituted cases against Sikandar Bakht and I protected him. I am his well-wisher.

SHRI LAL K. ADVANI: I am fully aware of all the equations between the persons involved and all the possibilities. Even in the other House you have brought in these matters and, therefore, I have to refer you to those cases.

SHRI H. R. BHARDWAJ: I may also enlighten you that there are certain privileged communications which, under the Evidence Act, I cannot divulge against my client.

SHRI LAL K. ADVANI: Though I have not been a lawyer, I am aware of the Evidence Act.

SHRI LAXMI NARAIN (Delhi): He is very mild towards Mr. Bakht and that is the reason why he is not getting the CBI case registered against him. (*Interruptions*).

SHRI LAL K. ADVANI: As the Minister of State has intervened at this stage, I wish to make a point. I do not want to refer verbatim to his speech in the other House, it is not the practice, but the press reports that have appeared are disquieting, extremely disquieting. Madam, the Minister is aware and he himself has quoted article 121 of the Constitution in his speech which says:

> "121. No discussion shall take place in Parliament with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties except upon a motion for presenting an address to the President praying for the removal of the Judge as hereinafter provided."

This article is very clear. If I am to interpret its value and importance in terms of a constitutional treaties prepared by the former Chairman of this House and former Chief Justice of the Supreme Court in the country, Justice M. Hidayatullah, the treatise has commented on this article thus. This Article, in a subtle way, embodies the principle of independence of the judiciary so that justice can be dispensed to the litigant without fear or favour. So, a Judge has been given complete immunity from any discussion, criticism or any attack on his conduct as Judge in Parliament. In a way, article 121 imposes a restriction on the freedom of speech in Parliament. We have freedom of speech but this article imposes a kind of a restriction on what we say. And I am sorry to say, Madam, that from the reports which have appeared in the press the Minister has not been very particular and scrupulous in respecting this article when he replied to the debate in the other House. I have with me a report which says:

> "Mr. Bhardwaj said the Supreme Court Judges seemed to be very keen on defending Mr. Sikandar Bakht."

Yet there is another quotation in connection with Mr. M. L. Sinha about whom some observations have been made.

SHRI JAGESH DESAI (Maharashtra): Are we discussing this aspect or are we discussing the Judgement only? This is something different, completely out of context.

SHRI PARVATHANENI UPENDRA (Andhra Pradesh): These are the matters connected therewith.

SHRI LAL K. ADVANI: Madam, Deputy Chairman, I have referred to this because I do not want the Minister to make a repeat performance in this House. That House is separate, our House is separate and in this House I would be keen to ensure that the immunity provided by the walls of this Chamber are not abused by any Member, much less the Minister, to denigrate the judiciary.

THE DEPUTY CHAIRMAN: Mr. Advani, may I say, if the Minister makes any such comment, at that time you may say, but at this moment you may continue with what you want to say? Because you should not in anticipation say this.

SHRI H. R. BHARDWAJ: I think Mr. Advani, you check up with Prof. Madhu Dandavate. He applauded that I had not said anything injurious to the dignity of any Judge or the Court. The mover himself applauded this.

SHRI LAL K. ADVANI: Unless this report is incorrect.

THE DEPUTY CHAIRMAN: I would request Mr. Advani to confine

himself to the subject, because time is limited and we cannot go on discussing...

SHRI LAL K. ADVANI: I fully appreciate...

SHRI J. K. JAIN (Madhya Pradesh): On a point of order. While we all have the highest respect for the judiciary, I would only like to bring to the notice of he hon. Deputy Chairman one fact—that this case itself is pending in the court. Can we discuss any case which is sub judice? I want to know that. The same case is still pending in the courts filed by the Municipal Corporation of Delhi. Can we discuss this case? And I demand that this case should not be discussed here. It is only politically motivated and these people are in the habit of raising these issues. I request that this case should not be discussed here...No, this is a fact. What I am narrating here can be checked with the Government and with the Law Minister who is present here that the case is still pending with the court of law.

SHRI M. S. GURUPADASWAMY (Karnataka): Just a minute. I respect my hon. friend here...

THE DEPUTY CHAIRMAN: Are you on a point of order?

SHRI M S. GURUPADASWAMY: Yes, Madam.

SHRI J. K. JAIN: Madam, they just get up like that...

THE DEPUTY CHAIRMAN: Please say so. It is not free for all.

SHRI M. S. GURUPADASWAMY: On a point of order, Madam. What does he mean by referring to us as "these people". Is it proper?

SHRI J. K. JAIN: It is very proper for you.

SHRI M. S. GURUPADASWAMY: I am asking you, Madam.

SHRI J. K. JAIN: You understand only this language.

SHRI M. S. GURUPADASWAMY. I am asking you, Madam, Is it proper?

THE DEPUTY CHAIRMAN: I would request Advaniji to continue his speech.

SHRI S. W. DHABE (Maharashtra): What is this, Madam? Language should be appropriate. (*Interruptions*)

THE DEPUTY CHAIRMAN: You must use proper language.

SHRI M. S. GURUPADASWAMY: By saying "these people understand this language only" and that sort of thing, which he has said now, he himself is saying that he has no respect...

SHRI J. K. JAIN: I have not said that. He does not have any proper respect for the Chair. Without having your permission, he just gets up and...

SHRI M. S. GURUPADASWAMY: I have taken the permission

SHRI J. K. JAIN: There should be some decorum in the House.

SHRI M. S. GURUPADASWAMY: I think I have taken your permission and raised this point of order.

SHRI J. K. JAIN: But you were not given permission.

THE DEPUTY CHAIRMAN: I would request all the Members concerned to be serious when they are discussing any subject in the House. There is no need for controversy and using not very good language against each other. Will you please conclude, Mr. Advani?

SHRI LAL K. ADVANI: Madam Deputy Chairman, I have raised this point because if what has been reported in the press is correct, if that is said by the Minister outside the House, he would be making history because he would be the first Minister of the Central Government to come within the mischief of the Contempt of Courts Act. Already Mr Jagmohan has earned for himself all these strictures. Why complicate the position? And therefore one has to be scrupulous by adhering to and respecting Article 121 of the Constitution.

Madam, so far as strictures are concerned, it is surprising for anyone to suggest that there are no strictures in that judgement, that only one of the Judges made certain observations which are somewhat strong and in which words like "politically motivated" and "malafide" etc. have been used, and so the judgement, as such, does not castigate the Lt. Governor. This is the manner in which the whole thing is sought to be white-washed and soft-padalled. First of all I would like to quote that particular part of the judgment which I think is very pertinent and relevant to the discussion we are having today. I need not go into the entire story of what happened in 1949, what happened in 1978, what happened in 1980 and all that. But, in 1982 orders were issued by the Lt. Governor or under his direction, which were challenged in the Court and about which this judgment has been delivered. In that judgment the Court observed—I regard it as the "Court"; I do not draw distinction among Justice Sen and Justice Venkataramiah and Justice Misra in the manner many on the Treasury Benches would like to draw because it is not a dissenting judgment; it is one judgment; they have given their own arguments; they could have stressed one point or another but the important judgment and the principal spokesman of the Court...

SHRI N. K. P. SALVE (Maharashtra): Do you think these three judgments are concurrent?

SHRI LAL K. ADVANI: They are separate judgments but they all agree in substance. There is no disagreement. "In the facts and circumstances, I am constrained to hold that the impunged notices dated March 1, 1980 and March 10, 1980 were not issued *bona fide* in the ordinary course of official business for implementation of the law or for securing justice but were actuated with an ulterior and extraneous purpose and thus were wholly *mala fide* and politically motivated." This is Justice Sen. Justice Venkataramiah may not have used the same language, but even what he says is...

THE DEPUTY CHAIRMAN: Mr. Advani, I think you will have to conclude because you have already taken 17 minutes.

SHRI LAL K. ADVANI: I want to stress this that the three judges, even though they differ on certain legal aspects, on the core of it, that the Lt. Governor...

SHRI JAGDISH DESAI: They differ on legal aspects?

SHRI LAL K. ADVANI: Certainly they do—I admit. For example, Justice Sen says that this is an assault on press freedom. He derives his conclusion from Article 19, whereas Justice Venkataramiah says that it is a breach of the right to equality. I am aware of it. But so far as the Lt.-Governor's conduct is concerned, about that all the three judges are agreed that he has acted without authority, he has acted arbitrarily. "Arbitrary" is the word used even by Justice Venkataramiah and the third Judge, Justice Misra, concurs so that the substance of it which makes me call for the resignation of Mr. Jag-

mohan is endorsed by all the three. So far as the second judgment is concerned, all the three are of the view and what they have said in their judgment on the second revision petition filed by Mr. Jagmohan is even severor. They said:—

> "This crude attempt on his part by filing this review application on totally false allegations is an attempt to subvert the course of justice. His conduct in casting serious aspersions on the Court by suggesting in Paragraph 10 that the delay in the pronouncement of the Judgment was responsible for the facts stated and submissions made on behalf of the repondent, having a decisive bearing on the case, escaping the attention of their lordships, 'virtually amounts to gross contempt of court."

Never before have I seen a severer judgment, a judgment castigating a high official, presently the Governor of Jammu and Kashmir. And this judgment arising out of his review petition is on his conduct while he is Governor of Jammu and Kashmir. It may not have any thing to do with that office, but he is the Governor of Jammu and Kashmir and this kind of a judgment comes and even then he chooses not to resign and he chooses to stay put in that position saying "I am not going to resign." What disappoints even more is the manner in which the ruling party is now acquising in his sins. It is unbelievable. Therefore, I would like to conclude by quoting, not anyone else, not the "Indian Express", but a paper which is normally sympathetic to the ruling party. I hope Mr. K. K. Birla is here. He is very much here. This is an editorial from the "Hindustan Times" of all papers. And what does it say? It says. After all, now the situation has changed. Now a new set-up has come up. Now a new Prime Minister has come. And so it hopes the response will be different. The heading of the editorial is "A Blow for Freedom." It says that Justice Sen made certain observation that the object of the whole exercise was to silence the voice of the "Indian Express", and then it goes on to conclude:

> "Since the political style of the Rajiv Gandhi Government is markedly different from that of the previous one, a big question mark may now hang over Jagmohan's continuance in office as the Governor of the sensitive State of Jamnu and Kashmir where his topple operation agains. Farooq Abdullah has begun to boomerang."

Madam, it is 10th October, 1985, immediately after the judgment was delivered. This is the expectation which even supporters of the ruling party had from the ruling party three days later. One month has passed. Obviously, that expectation was an illusion. The ruling party should realise that if hereafter you continue to defend this Lt.-Governor who has been found guilty by the highest tribunal in the country, it is not merely Mr. Jagmohan who would be in the dock but the entire party and the entire Government will be in the dock.

Thank you, Madam.

SHRI N. K. P. SALVE: Madam, I have heard with great concentration the speech of Shri Advani. We have great respect for him, and he is a great parliamentarian. I honestly wish that this discussion had been opened by some one who had forensic background, without meaning any disrespect to him, because he is not drawing a distinction between a minority judgement and a verdict of the court.

SHRI LAL K. ADVANI: I am a layman and I speak the language of the layman. That is all.

SHRI N. K. P. SALVE: I am also speaking the language of a layman but with some common sense.

[Shri N. K. P. Salve]

Madam, the minority verdict, the minority judgment, is never the verdict of the court. It is never the judgment of the court. It is the majority judgment which is. We have so many lawyers. You ask any one of them. The judgment of the majority is the verdict of the court; that is the judgment of the court.

I entirely agree that this judgment of the Supreme Court in the Express Building Case is a tremendous landmark in the history of judicial pronouncements. But for a minor point on which we disagree with the majority judgment and agree with the minority, we ourselves find that the verdict is fair, it is judicious and it is sound.

What is the verdict? You have referred to the verdict of the court. The Verdict is one which fully vindicates the action for enquiry into the illegalities. The judgement does not say that the freedom of the press is involved. You referred to that para indicating Mr. Jagmohan and the long discourse on supposed tyranny unleashed during the emergency, supporting Mr, Sikandar Bakht, running down Mr. Jagmohan. There are all referable to the issue raised about violation of the freedom of the press. In that context it was raised that the freedom of the press was sought to be murdered. Two Judges have not said that the freedom of the press was involved. It is a commercial complex which is being built there. And, therefore, whatever has been stated in the minority judgement with reference to Mr. Jagmohan and to the emergency and the misrule by the Congress Government is in respect of an issue which does not arise out of the court verdict freedom of the Press, does not arise in this case. Make that distinction, Mr. Advani, first and foremost.

I will read out what the verdict of the Supreme Court is. Justice Venkataramaiah's judgement is, in fact, the majority judgement, and that is the verdict of the Court. This is what he says and I quote him:

> "These questions cannot effectively be disposed in this petition under article 32 of the Constitution. The quesions arising out of the lease, such as whether there has been breach of the convenants under the lease, whether lease can be forefieted, whether relief against forfeiture can be ganted, are foreign to the scope of article 32 of the Constitution."

"They cannot be decided on an affidavit. These are matters which should be tried in a regular civil proceedings. One should remember that the property belongs to the Union of India and the rights in it cannot be bartered away in accordance with the sweet will of an officer or a Minister or a Lt. Governor."

This is why it is a landmark. The Supreme Court has protected; and Jagmohan has protected very valuable property of the Union which was sought to be bartered away by Mr. Sikander Bakht in favour of a tycoon. What did they further say... (*Interruptions*)...

SHRI JASWANT SINGH (Rajasthan): In what way Mr. Sikander Bakht is concerned?

SHRI N. K. P. SALVE: I am coming to you Jaswantji. I am only replying to Mr. Advani. Thereafter I am only going to read out the facts very lucidly referred to in the minority judgment. I will leave it to the House. I will leave it to the Members. I will leave it to the country to judge whether Jagmohan is to be blamed or praised or Sikander Bakht.

[Shri N. K. P. Salve]

There is no attempt on our party to denigrate the Supreme Court. We cannot...

श्री लाल कृष्ण आडवाणी : अंतुले की भी ऐसी तारीफ़ की थी आपने । (व्यवधान)

श्री एन० के० पी० साल्वे : आपको याद होगा अंतुले के वक्त मैंने यह कहा था (व्यवधान) आप रिकार्ड ले आइये, मैंने यह कहा था कि अंतुले जो कर रहा है गलत कर रहा है मगर आप लोगों को शोभा नहीं देता अंतुले को कुछ कहते हुए । वही आपके नेता अटल बिहारी वाजपेयी करते हैं, चौधरी चरण सिंह भी वही करते हैं । आप लोग जब करते रहे तो ठीक रहा । यहां रिकार्ड लाइये, अगर मैंने यह कहा हो जो आप कह रहे हैं तो मैं रिज़ाइन करने के लिए तैयार हूं नहीं तो आप तैयार हो जाइये रिज़ाइन करने के लिए (व्यवधान)

SHRI M. S. GURUPADASWAMY: Why do you defend indefensible?

SHRI N.K.P. SALVE: Mr. Gurupadaswamy I thought you had at least some background of law (*Interruptions*) I am reading a majority judgment which does not suit you. What did they further say: (*Interruptions*)

THE DEPUTY CHAIRMAN: Let him continue his speech.

SHRI N.K.P. SALVE: What did they further say:

"It is open to the Delhi Municipal Corporation to examine the matter a fresh and independently and take such action that may be open to it in accordance with the law. The Delhi Municipal Corporation, if so, advise instead of taking any further action against the petitioner, permit the petitioner to compound the breaches, if any committed by them, etc. etc."

Madam, the petition may have been admitted, but even if it had been dismissed the Supreme Court could not have given any better directions than what they have now given. Therefore, the Supreme Court judgment is sound and we respect it. There is no confrontation by us. So far as this judgment is concerned, it is wholly in our favour. As a result of this verdict, the Delhi Development Authority, the Municipal Corporation, the Ministry, etc etc., have an untrammelled right to enquire in accordance with law into the various...

SHRI S. W. DHABE: Madam...

THE DEPUTY CHAIRMAN: Mr. Dhabe, will you please stop cross-talking?

SHRI N.K.P. SALVE: Madam, these Government Departments have got an untrammelled right to enquire into the various illegal constructions of the Express building according to law. This is so far what Mr Advani has to say.

Madam, I was distressed to read in the "Indian Express" today (November 28, 1985). This is what the Indian Express in its editorial says:

"The Government's assertions in the Lok Sabha on Tuesday on the Indian Express building case approximate more nearly to an indictment of the Supreme Court than a reasoned defence of the Jammu and Kashmir Governor, Mr Jagmohan, who was strongly censured by the Court for his "politically-motivated" action in seeking the destruction of a critical newspaper to muzzle the press."

Firstly, Supreme court having not held that freedom of the press is involved in this matter and whatever strictures have been given for violating freedom of the Press are utterly out of place, unwarranted, unjustified. That is the verdict of the Supreme Court. The Majority judgement nowhere says that the action is "politically motivated". Therefore, if Mr Advani says that the court has said that the action is

[Shri N. K. P. Salve]

"politically-motivated" it is wrong. The majority judgment nowhere says that either Jagmohan is malafide or reacted with political motivations. All that they have stated is that he took undue interests which he was not authorised to. As a result of this action of Mr. Jagmohan the issuance of the notices have been held to be arbitrary and without application of the mind by the people who have issued the notice. In the end it is wrong to say that the Government is doing great disservice to the cause of both justice by the extraordinary attitude of definace and denigration There is no denigration involved. We have highest respect for the Supreme Court. In fact, if ever we wanted a judgment to protect public interest, it is this judgment which has protected the valuable interest, protected the valuable property of the Union. But not only the Indian Express but a very esteemed friend of mine also asked me a question: Are you deciding the issue purely by a voice vote? "Is it purely because of your brute majority that you are exonerating Shri Jagmohan and condemning Shri Sikandar Bakht? In the judgement he is the main figure. (*Interruption*)... He is made the hero. There are only two heroes. I do not think you have read the judgement. There are only two heroes. One is Ram Nath Goenka, heroic crusader against the emergency and Sikandar Bakht, a great protector of the private sector. This question was asked by my esteemed friend. I would perhaps have ignored Indian Express on the issue. Whether we are arbitrary purely because we have a brute majority on facts, something not justified was being done by us in exonerating Mr. Jagmohan? Unfortunately, this case has not been reported in any of the Law Reports. Even the newspapers are writting, and hinting not knowing, fully as to what really is the verdict of the court. What is the ratio decidendi of the court judgement and in fact, they are citing observations in the minority judgement which stand over-ruled by the verdict of the Supreme Court. Therefore, Madam, I want to state some facts. Our case is that on facts some issues are to be decided whether in permitting 360 FAR for the construction of the Indian Express building Mr. Sikander Bakht exceeded the maximum permissible FAR. FAR, Madam, I must explain is the floor area ratio. It is the ratio of the floor area to the land itself. If the land is a thousand square feet and the FAR is 200, then on thousand square feet of land your floor area can be 2,000 square feet. That is why, FAR is of great importance.

THE DEPUTY CHAIRMAN: That is known as FSI in Bombay.

SHRI N.K.P. SALVE: That is right Madam. Whether in permitting 360 FAR for construction of the Express Building, Shri Sikandar Bakht exceeded the maximum permissible 300 FAR as per the master plan, the DDA policy, the Municipal Bye-laws and in breach of the term of the lease? Whether in reality, the area of construction far exceeded the area permitted to be constructed by Shri Sikandar Bakht for actual construction? Whether the plea for grant of higher FAR, for construction of press was a fraud and was to build a commercial complex to be let out on exorbitant rents? Whether during Janata regime other press owners were either not given permission to extend beyond 300 FAR and those permitted to expand marginally beyond 300 FAR were facing withdrawal of permission? At the same time when Sri Sikandar Bakht allowed 360 FAR. Whether, what was sought to be thwarted was an inquiry into the illegality in the construction of a commercial complex without payment of conversion charges for about Rs. 3 crores on the false plea that freedom of the press was being violated in iniation of action for an inquiry? Whose actions were malafide and politically motivated? That of Sri Jagmohan or Shri Sikandar Bakht? Now I will only go ahead. (*Interruption*).

Please listen to these facts calmly, dispassionately and objectively. These are the facts which have been lucidly narrated in the minority judgement by which you are swearing and you see, Madam, the speed with which Sikander Bakht this department was then working. Mr. Jagmohan has been damned and condemned in the minority judgement for acting very fast. Kindly look at the speed with which the DDA was working, the Works and Housing Ministry was working; the Municipal Corporation was working during Janata regime. They were working over time to grant this lease. Now these are the facts. I am quoting from page 26 onwards:

"On October 25, 1977, the Express Newspaper Ltd. addressed a letter to the Secretary, Ministry of Works and Housing, saying that additional construction on the western portion of the plots 9 and 10, leased out was possible after the sewer line was shifted. "They asked for shifting of the sewer line and they were in need of larger amount of open space because they wanted to start a Hindi Newspaper and were also in need of an additional basement where the Printing Press would be located."

SHRI M. S. GURUPADASWAMY: All these things have been gone into in the court itself.

SHRI N.K.P. SALVE: What is the judgement? Mr. Gurupadaswamy, you are unable to understand what is the judgement. These are the facts. Why don't you listen patiently to the facts? On November 3, 1977, the Secretary instructed the Joint Secretary to call a representative of the Express Newspapers. After the 25th October, on 3rd November the Secretary instructed the Joint Secretary to call a representative of the Express Newspapers and the Land Development Officer and evolve a solution.

The Joint Secretary directed the Under Secretary to do the needful.

Now, on the 14 November, Shri R. K. Mishra, General Manager, authorised representative of the Express Newspapers waited on the Under Secretary, Land Development, Ministry of Works and Housing, and was verbally informed that the requisite permission of the Ministry should be sought after the building plan was approved by the Municipal Corporation of Delhi.

On the 7th December, the petitioner, Shri Ramnath Goenka, addressed a letter to Shri Sikander Bakht, the then Minister for Works and Housing drawing his attention to the aforesaid meeting where the representative of the Express Newspapers Private Limited was intimated that they should first submit their building plan to the Municipal Corporation of Delhi and thereafter seek permission of the lessor, who would advise them on the amount of area to be used. He requested the Minister to issue necessary instructions directing that the plots in the Press Area should be treated as commercial complex which would entitle the plot- holders to build on the entire area of their respective plots subject to the restriction of height of 60 feet as stipulated.

There followed a meeting on December 27 with the General Manager of Indian Express Newspapers in which officials of the Delhi Development Authority were present and the extent of FAR permissible was specifically discussed. And thereafter the General Manager of the Indian Express Newspapers himself writes what he thinks was the permissible FAR. That is, this was followed by a letter of the General Manager dated 23rd December 1977 to the Secretary, Ministry of Works and Housing, in which he referred to the meeting where it was felt that although the Press Area was not expressly mentioned in the Master Plan, it would still fall under the general category of "other commercial areas", where only an FAR of 300 was permissible and that it

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would be so despite the fact that no such limitation existed when the Press Complex was established.

According to a note recorded by the Minister on the margin of the letter of the petitioner, Shri Ramnath Goenka, dated 7th December, instructions were issued to the Delhi Development Authority to examine the question.

In January 1978, the then Secretary, Ministry of Works and Housing recorded a detailed note and put it up to the Minister. This is the time when Mr. Sikander Bakht was presiding over the Works and Housing Ministry, when the Janata Government was in power. It was recorded in the note that the assertion that others in the Press Area had an FAR of 500 was factually not correct. The maximum FAR for all the Press plots was 300 and below, except in the case of "Times of India" where it was 304 and "National Herald" where it was 306.3. According to him, the effect of allowing the petitioner to erect a similar building on the other half would mean a rise from 300 to 400

The Minister asked the Secretary to discuss the matter with the petitioner, that is, Shri Ramnath Goenka and arrive at a suitable solution. How many lessees get that privilege, Mr. Advani? The Secretary noted, "I find it difficult to recommend the FAR requested by Shri Ramnath Goenka as this will inevitably lead to requests from other plot-holders. They might use up their entire land area building upto 60 feet, which will mean an increase from 300 to 400, affecting parking and other requirements which may not be acceptable. If their needs of starting a newspaper are really genuine, some considerable concession will be needed perhaps an increase from 260 to 360 should be permitted."

On January 18th, the Minister of Works and Housing agreed with the view of the Secretary and ordered "I agree". This is not the end of the matter.

The Ministry, by a letter on February 2, 1978, conveyed to the Vice-Chairman, Delhi Development Authority, the decision of the Union of India to permit the petitioner to build up to an FAR of 360. What happens? Copies of this letter were endorsed to the Town and Country Planning Organisation and the officer in charge, Master Plan, in the Delhi Development Authority. The Additional Secretary, Delhi Development Authority, however, maintained that the FAR permissible for the Press Area was only 300. And 80 per cent ground coverage, 70 per cent of the first floor and 50 per cent of the ground floor. Another letter of 6th March was addressed by Ramnath Goenka to the Minister —and see the manner in which this letter is written to the Minister as if he is his servant—in which he reiterated the earlier request made by him for allowing the Petitioner to build 100 per cent of the plinth with the height restriction of 60 ft. It stated that the Minister had informed that the order allowing the Petitioner up to FAR had already been passed and further construcion beyond it would be sanctioned later. Immediately thereafter the Ministry of Works and Housing took a decision to reverse the decision adverse to the Indian Express Private Limited. On 15th April 1978, P. B. Ray, Town and Country Planning Officer, put up a note objecting to the Government's decision to increase the FAR to 360 on the ground that it was in total contravention of the Master Plan and would have serious implications. It is a long note the relevant part of which may be extracted. As per the Master Plan FAR 300 in covered areas does not apply for any area in Delhi... *(Interruptions)*

SHRI PARVATHANENI UPENDRA: When he is reading out all those documents, let them all be laid on the Table.

SHRI N. K. P. SALVE: He further said that such a decision to construct...would not be implemented by the Municipal Corporation as their existing bye-laws and rules permitted construction only up to 300. On this TCP's note the Deputy Secretary put up a note for obtaining the orders of the Secretary, Ministry of Works and Housing and the Minister because the Petitioner wanted to build 100 percent coverage while the TCP not said that the permitted FAR was only 300. Accordingly, the Under Secretary put up a note on 8th May and recommended the reduction of FAR to 300. On the same day the Deputy Secretary marked the file to the Joint Secretary. On May 18, 1978 the Joint Secretary (Delhi Division) pointed out that the Petitioners were not happy with the FAR of 360 against their original demand of 500 and...430.67 while the maximum FAR permissible was 300, as pointed out by the Secretary, Master Plan, DDA. He, therefore recommended restriction of FAR to 300 as per the bye-laws of the Municipal Corporation of Delhi and the Secretary annexed the said report. Thereafter the Minister approved of the restriction of FAR to 300. The Minister made an order that it cannot exceed beyond 300. And then what happens? The case was again reviewed on 4-7-1978 when Sikander Bakht, Minister of Works and Housing, wanted to know after some representation of the Indian Express Newspapers who had visited his office, if the press area... A meeting was fixed to discuss the matter in the room of the Minister in August 1978 and the following note was recorded by D'Souza. "The JS, Vice-Chairman, DDA and I met the Minister today and explained the undersirability of allowing the Indian Express a higher FAR than already proposed in this case, particularly the repercussions it would have on the other occupants of the plot on this road. The Vice-Chairman suggested another possibility, namely of allotting to the Indian Express some other land where it can put up the building." Thereafter what happens?

The Vice-Chairman suggested another possibilty, namely, of allotting the Indian Express some other land where it can put up the building more than 300 cannot be allowed; we may give them some other plot. Subsequently on October 31 Mr. Buch makes an order", amalgamating plots 9 and 10 taking into account the exising built-up area would permit 360." He, Mr. Buch, further directed that the aforesaid order was to be treated as one under special appeal. The Vice-Chairman in his order further mentioned that the Minister of Works and Housing had ordered that the cases should be cleared immediately and his ex-post facto sanction obtained by the DDA. Is there any doubt in the mind of anyone who has heard these facts that 360 FAR was given palpably and clearly in breach of Delhi's Master Plan the rules of DDA and the municipal bye-laws as per the record.

Madam, I have a document here to refer to. It is a letter from a Tej Daily which is dated the 30th November, 1979 it relates to the same period in which he says:—

"We have been running a printing press for the last three years at the aforesaid premises. Since then our organisation has expanded manifold and is experiencing shortage of space. Our organisation is engaged in bringing out a daily newspaper and a weekly newspaper in the name "Sun".

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"Moreover due to shortage of space in these premises we have not been able to shift our editorial staff from Naya Bazaar which is not only causing hardship to us, but we are also incurring heavy expenditure unnecessarily. Some of the areas on the upper floor have been rented out to Engineers India Limited, etc. Under the circumstances, it is requested to kindly grant us an enhanced FAR of 360 instead of 300. Enclosed please find the plan showing the proposed area. We may mention that all the proposed extensions are planned in such a way that the overal height of the building is not affected. Needless to say that you have recently allowed the FAR up to 360 for the other newspapers only in this area."

Madam this letter was written in 1979. Not even an acknowledgement was sent by the Janata Government or by Mr. Sikandar Bakht. In a few months' time Mr. Goenka was given an FAR of 360 in violation of the provisions of the Master Plan municipal laws, etc. What is worse, Madam, is contained in another document; I want you to take note of this thing. A docment which I want to read out to this House:

"By a resolution dated the 29th December 1976 a "No Objection" Certificate was given to "The National Herald" for the construction of a canteen in the building as a welfare measure for its employees. This had the effect of raising the permissible FAR from 300 to 350. When the Janata party came to power the Ministry of Works and Housing headed by Mr Sikandar Bakht, got the certificate rescinded on the ground that there was no case for approving any increase in the FAR beyond 300 FAR on individual. The same Government permitted this in the case of Shri Ramnath Goenka." (*Interruptions*).

SOME HON. MEMBERS: Shame, Shame (*Interruption*).

SHRI N. K. P SALVE: Madam, during the heading of the case certain arguments were advanced and one of the arguments advanced was that the entire new Express Building, with the exception of the basement is being used wholly for commercial purpeses. Its tenants include M/s. Greaves Cotton a group of the ten companies belonging to the Shriram Foundation Steel Authority of India Limited, the National Bank for Agriculture and Rural Development etc. The total area rented out is about 50,000 s. ft. at a rate of Rs. 16|- or 17|- per s. ft. The total annual Income comes to over Rs. 1 crore. What is still more astounding is that even the conversion charges which are estimate to be over Rs. 3.30 crores, plus the in interest liability for five years or so, have not been paid what has happended madam, is that even though this illegal permission was given the actual construction far exceeds the illegally permitted construction. I am reading out from a report in "The Times of India", issue dated 2nd November, 1965:

"A fresh inspection completed by the Municipal Corporation.... (*time bell rings*). Madam, give me five minutes more.

SHRI JASWANT SINGH: This is after the judgment or before the judgment?

SHRI N. K. P. SALVE: This is the argument advanced (*Interruptions*).

SHRI JASWANT SINGH: This is before the judgment or after the judgment?

SHRI N. K. P. SALVE: This press report is after the judgment; this is

after the judgment. What I have read out so far is in the course of the proceedings itself. Now, what I am reading out is...

SHRI LAL K. ADVANI: After that, the verdict is this.

SHRI N. K. P. SALVE: What verdict is there, I have already read out to you and if you are not accepting it, you are entitled to your opinion. Now, what has happened is this. What we are saying is that the issue of the impugned notice is that not only the permission which was given was *per se* illegal, but the construction has gone farther than that, and this has a bearing on all the facts, and I would like to read out a quotation from "The Times of India" of 2nd November, 1985:

> "A fresh inspection completed last by the Municipal Corporation of the Indian Express Building revealed substantial unauthorised construction in violation of the 1980 stay order issued by the the Court which is in addition to the violation of law prior to the issue going to the Court. The sanctioned plan, which itself was a liberal exemption from the normal rules, allowed 14,400 sq. ft."
>
> "....In 1980 it was found that not only was the actual area coming to 19890 sq. ft, but another completely illegal basement of 8914 sq. ft. is built. The inspection team found that the basement area had gone up to 20,010 sq. ft., and the second one similarly increased to 10,426 sq. ft. A roof....has been added to make a third basement of 5080 sq. ft...". *(Interruptions)*

This heap of super irregularities led Mr. Jagmohan to take certain action, and action was taken, because in a Notification issued by the President, Mr. Jagmohan as a successor-in-office to the Chief Commissioner had been asked to deal with the leases. I am referring only to a few lines from the leases, Madam, which is on page 65 of the judgment:

> "The lessee will not...."

Here the lessee is Mr Ram Nath Goenka.

> "The lessee will not, without the previous sanction in writing of the Chief Commissioner of Delhi or of such officer or body as the lessor or the Chief Minister of Delhi may authorise in this behalf, make any alterations or additions...."

Clause 5 says:

> "There shall....in the hands of the lessor or the Chief Commissioner of Delhi, whose decision shall be final, in breach of lease, and any person claiming...."

Now, it is admitted, it is on record, by a notification issued by the President which was issued on the 7th September by virtue of an order made in pursuance of 239 any powers and functions were, immediately before 7th September, the powers and functions of the Chief Commissioner of the Union territory, such powers and functions shall, after the said date, be exercised and discharged by the Lt. Governor."

It is on record. It was the Affidavit of the Secretary, Ministry of Works and Housing—this was before the Court—that since 1966 all the leases which have been executed by the Chief Commissioner will be administered by the Lt. Governor as the successor-in-office. *Bona fide*. Not only in respect of this lease, Mr. Kohli did so. Mr. Jagmohan did so. And until the infirmity was found in this judgement that this Notification did not vest such authority in the Lt. Governor—it was the basis on which the Ministry of Works and Housing allowed Lt. Governor to act. And this is what they have stated in the Affidavit filed by the Secretary of Ministry of Works and Housing.

"I am advised to say...."

This is during the hearing.

"I am advised to say that the orders passed by Shri Sikander Bakht, the then Minister of Works and Housing were illegal

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improper and irregular...." (*Interruptions*)

How do you say it is not the Union Government versus Mr. Goenka? This is the Affidavit of the Secretary of the Ministry of Works. The powers and functions assigned to the Chief Commissioner of Delhi in the Lease Deed were exercisable by the Lt. Governor by virtue of a Notification issued by the President, dated September 7, 966. That is the Notification I have referred to. And what is most important is, this is the view of the Ministry, Madam:

"The order of Mr. Buch, the then Vice-Chairman of the DDA, dated October 21, 1978, was without any legal authority and sanction and the said order was passed by him in clear violation of the procedure laid down in section... of the Delhi Development Act, in as much as no relaxation of permission.... could be made which was tantamount to a modification of the Master Plan. The said decision cannot be implemented by the Municipal Corporation because it would require modification of their existing byelaws. It cannot be done for a particular case or building or for one particular commercial area..."

(*Interruptions*)

SHRI JASWANT SINGH: Madam, how much time...

THE DEPUTY CHAIRMAN: We have 2-1|2 hours... (*Interruptions*) One hour and forty-five minutes for Congress; it is entirely for them to use it, either by one Member or.... (*Interruptions*)

SHRI H. R. BHARDWAJ: It is not even 4 o'clock; it started at 3 o'clock.

THE DEPUTY CHAIRMAN: Do you want the verdict of the Chair in time? (Interruptions)

SHRI N. K. P. SALVE: In the context of the circumstances, I want to put it to the House and to the nation, on the facts itself, whether or not the 360 F.A.R. which Mr. Sikandar Bakht permitted was opposed to the DDA's master plan, was opposed to the D.D.A.'s policy and was opposed to the bye-laws, whether or not it was discriminatory, whether or not they refused to give the same F.A.R. to others, whether or not he tried to rescind the permission which was given to the National Herald to build 315, whether or not the original pretext that was forwarded that the building was needed for purpose of construction of a press, for publication of a newspaper was a total fraud which was not unknown to Mr. Sikandar Bakht. Could not a single question be asked? You are asking for 360 F.A.R. How much do you need for a press? Are you going to build all the presses of the world in one building or only one press? If one press was being built, then it requires much lessor space for which there would have been no difficulty. Thereafter, what is more important is that there is conversion charge of 3 crores which was sought to be evaded enquiry into which was sought to be thwarted. This is what is recorded in the same minority judgment. Mr. Advani, for your benefit, Dr. Singhvi, appearing for respondent No. 5, the Land Development Officer, submitted that unless the Express Newspaper furnishes to the Municipal Corporation of Delhi the sanctioned plan asked for in the impugned notices, it is not possible to work out the conversion charges and other charges and submit the area for approval of the Ministry of Works and Housing. According to the learned Counsel, the rough estimate of the charges payable by the Express Newspaper was determined on the basis of data available to the Municipal Corporation of Delhi and was arrived at as given in the chart given above if commercial subletting were to be permitted. On the basis of these calculations the estimated commercial charges came to approximately 3.30

crores plus the interest. What is done on the facts of this case? Not demolition. Not recently what is done is to issue a show-cause notice to find out whether or not the order of Mr. Sikandar Bakht was valid, a legal order. Or was it illegal and discriminatory in violation of the master plan, in violation of D.D.A's rules and in violation of the municipal bye-laws? Mr. Goenka rushes to the Supreme Court on the plea that the freedom of the press is involved. "My press is sought to be uprooted." In fact, what was in jeopardy was his commercial empire which had been let out at a fabulous rent of one crore of rupees. Mr. Jagmohan acted bona fide on the basis of a notification which, of course, now Supreme Court says has legal infirmities. Acting on that notification all the while, what he does with the help of his officers is that he collects information on the violations and gives it to the Land and Development Office and the Municipal Corporation of India who issued show-cause notices. May I please ask who has acted in the interest of the Union? Who has acted to protect the property? Has Mr. Sikandar Bakht protected the property or the Lt. Governor has protected the property? Is there even a single word in the verdict of the Supreme Court which is a majority judgment which imputes mala fide or political motives to Mr. Jagmohan or to anybose else. That is why I say that the order of the single Judge, the minority judgment, is most unfortunate. The background of the Judge being what it is, he comes from the same town where I come from. He is very eminent and distinguished jurist and a great Judge. For two generations the Salve family and Sen family were known to each other. His father used to practise when my father practised in the High Court. I have great respect for this Judge. Unfortunately, he got involved in a controversy during the emergency and was transferred. After the Janata Government came to power, they did the right thing for a wrong reason. They brought him to the Supreme Court. They brought him to the Supreme Court not because he was an eminent and good Judge but because they wanted to reward him. In this background, it would have greatly enhanced the prestige of my distinguished friends....
(*Interruptions*)

THE DEPUTY CHAIRMAN: One by one. Mr. Upendra.

SHRI PARVATHANENI UPENDRA: The hon. Member said that he had been brought here not for his eminence.

SHRI N. K. P SALVE: I was referring to family relationship which I am entitled to.

4 P.M.

SHRI PARVATHANENI UPENDRA: He is commenting on the appointment of the Judge. He has said that he has not been brought for his eminence. That is an insinuation. (*Interruptions*)

SHRI N.K.P. SALVE: Madam, the moment I come to discussing his conduct.... (*Interruptions*).

THE DEPUTY CHAIRMAN: There is way of conducting the House.

SHRI N. K. P. SALVE: All that I want to submit is that, Madam, of all the people in the two House, I am not the one who will be critical personally of Jusice A. Sen... (*Interruptions*) But I am entitled to consider the judgment And I am entitled to determine whether the judgment is right or wrong.

SHRI PARVATHANENI UPENDRA: You can comment on the judgment but not on how he was appointed. (*Interruptions*)

SHRI N.K.P. SALVE:... He was appointed for a wrong reason. It is not the conduct of the Judge. It is the conduct of the Janata Party when you were nowhere in the picture.

SHRI M. S. GURUPADASWAMY: He said that it is not for his eminence. I request you to see the record.

SHRI PARVATHANENI UPENDRA: You have commented on the suitability of the Judge.

THE DEPUTY CHAIRMAN: I think what Mr. Salve says is correct. He is not passing any aspersion on the Judge, but on the appointment. Somebody has raised a point of order.

SHRI M. S. GURUPADASWAMY: Is it your ruling?

THE DEPUTY CHAIRMAN: That is my ruling.

SHRI M. S. GURUPADASWAMY: Pleased see the record.

THE DEPUTY CHAIRMAN: I will see the record. If there is anything on the conduct of the Judge, it will be removed. If he has passed on his appointment, well...

SHRI PARVATHANENI UPENDRA: Are we within out powers to discuss on the suitability of all the Judges who are now being appointed by the Government?

THE DEPUTY CHAIRMAN: Will you conclude now?

SHRI N. K. P. SALVE: Madam, whatever they may say, I maintain that Justice Sen is a great Judge, a great jurist with a tremendous background. He was rightly recruited to the Supreme Court for a wrong reason by the Janata Party. Madam... (*Interruptions*) Madam, when the two Supreme Court Judges have stated—and it is of some importance—that article 19(1)(a) or 19(1)(g) need not be considered, that is, they did not hold that freedom of the press or of carrying on the business was involved. Is it then not clear, does it not become clear that the entire long discourse was out of place in the minority judgement where Goenka was eulogized, emergency was condemened; Mr. Sikander Bakht was supported. Mr. Jagmohan was condemened;? With reference to the finding that it was a case of clear blatant violation of the freedom of the press and it was violation of article 19(1)(a). The two Judges said that question of violation of the freedom of the press needs no adjudication. What was involved was a commercial empire for which Mr Goenka was drawing the rent without paying the conversion charge (*Interruptions*) Therefore when the two Judges themselves do not say that freeodm of the press was an issue they impliedly hold that observation against Congress Govt. an emergency in the context of freedom of the press were unwarranted, unjustified and out of place. It is fair of the Opposition Members to fall back upon a minority judgment which is not the verdict of the court to run down Mr. Jagmohan? The Judgment of the court is as decided by the majority. Have they not decided—the court—that 19(1)(a) or 19(1)(g) need not be considered? If that is not involved, whatever is witten by Mr. Justice Sen so far as the emergency is concerned, so far as Mr. Jagmohan is concerned and so far as Mr. Sikander Bakht is concerned is absolutely of no avail to the opposition. It does not have any sanctity. It is not worth the paper it is written on to afford any protection to Mr. Goenka on the order of Sikander Bakht.

श्री लाल कृष्ण आडवाणी : आर्बिटेरी कहा हैद्द विद-आउट ऐप्लिकैशन आफ माइंड कहा है । (**व्यवधान**)

SHRI N. K. P. SALVE: I want to explain. What is the legal concept of 'arbitrary' and without application of mind? Legal concept of arbitrary and non-application of mind is not mala fide. In an utterly bona fide belief, Mr. Jagmohan puts up his officers to enquire prima facie the legality of the construction. With all this massive material on the record, they found out the illegality and they put up before the Land and D.O. Officers, and he issues a show cause notice. He puts before the Municipality. He issues the show cause notice. Now they say since Mr. Jagmohan by virtue of that notification, in which Supreme Court has found now a legal informity, could not have acted under the lease, and he gave the material to these people. They say that the issuance of notice by these two people is

illegal and arbitrary and without application of their own mind. In these two judgements where is the finding of mala fide of Jagmohan? Where is the finding that his action was politically motivated? In the verdict of the court that is not the finding and to the extent these findings have been made, they have been completely over ruled. In fact majority judgement has virtually ridiculed minority judgement in upholding Sikander Bakht. I want to bring to the notice of this House that there is one point on which we agree with the minority judgment completely. (*Interruptions*) You argue your own case when it comes to you. Do not try to teach me. (*Interruptions*). Now, I do not know. Madam, why they have raised this discussion. It has raked up all issues.

SHRI MADAN BHATIA: Madam, I rise on a point of order. While the hon. Member was speaking, there was an interjection by an hon. Member on this side, namely, that it has been held in the majority judgment also that the decision of the Lt. Governor was without application of mind and, therefore, arbitrary. I would like to remind the hon. Member that there are a series of cases delivered in which the judgments were delivered by the courts of appeal and the House of Lords in England in which the decisions of the Ministers were held to have been taken without the application of mind. But never in the history of England on the basis of any such decision or any such finding, that there was no application of mind. ever any Minister resigned.

SHRI N. K P SALVE: At any rate, Madam, there is no question of *mala fides*...

SHRI SATYA PRAKASH MALAVIYA: Madam, on a point of order.

THE DEPUTY CHAIRMAN: It was not a point of order really. That is why I am not giving (*Interruptions*). Let him conclude please.

श्री सत्य प्रकाश मालवीय (उत्तर प्रदेश) : माननीय सदस्य ने जब बोलना शुरू किया तो कहा था कि मैं पाइंट आफ आर्डर पर बोलना चाहता हूं और आपने उनको परमिट किया । वह प्वाइंट आफ आर्डर है या नहीं इस पर आप व्यवस्था दें ?

उपसभापति : आपने सुना नहीं । मैंने कहा उनके प्वाइंट आफ आर्डर पर बोलने की जरूरत नहीं है ।

It was just an additional information, perhaps.

SHRI N. K. P. SALVE: Madam, I have read out the relevant part of the majority judgment of the two judges.

THE DEPUTY CHAIRMAN: Please conclude now.

SHRI N. K. P. SALVE: Please give me five minutes.

This is a very important issue before the nation. Let the facts properly come out. Let the whole nation know whether or not it was Mr. Sikandar Bhakt and the Janata Party who exercised absolutely unchanneled authority over the properties of the Government of India and allowed men like Goenka and others like him to make merry. It is only after Mrs. Gandhi came to power in 1980 that men like Jagmohan conscientiously tried to ratrieve that property.

Now Madam, entertaining the petition under article 32, under aricle 14 the impugned notices have been quashed by all the three judges. Now, Justice Sen says that there are certain basic issues, which the other judges said we are not able to answer. Now, his view is that is the two judges are not able to answer these questions then petition is not maintainable under article 32 and you cannot quash to the impugned notices and to that extent, we agree with the minority judgment. This is what the minority judgment says. He says, "there is the contention that these petitions are not

[Shri N. K. P. Salve]

maintainable under section 32 of the Constitution and this leaves him with some of the crucial questions which have been formulated hereinabove. One is whether the impugned notices were arbitrary and irrational without any clear basis and therefore violative of article 19(1) (a)? Second is whether the Lt. Governor could exercise that power in relation to leases, whether under the prevailing law. The Delhi Development Authority Act, the permissible FAR prescribed for buildings constructed on the Mathura Road complex could exceed 300? Whether the new Express building constitutes a breach of the Master Plan or the Zonal Development Plan?" Further what Justice Sen says is that these are the questions which obviously arise on these petitions under article 32 of the Constitution and any direction for quashing the impugned notices must necessarily involve the determination of those questions. "I regret that Mr. Venkataramaiah proposes to express no opinion on these questions." What more is needed when justice Sen him self says that if you are not willing to go into these questions the notices can not be quashed under article 32. How have they quashed the notices? Anyone who understands a little law and a little Constitutional law, will know one thing clearly that the crucial questions involved in the writ petition were arising out of contractual obligation and did not involve any fundamental right. The petition is not maintainable under article 32 unless the Judges are willing to go into certain crucial questions. And that is what Justice Sen says. And when it is not maintainable, how could the notices be quashed:

SHRI P. BABUL REDDY (Andhra Pradesh): All the three judges quashed the notices.

SHRI N. K. P. SALVE: He is not understanding. He is unable to understand what I am arguing. The other two judges, according to this reasoning, could not have quashed the notices, without going into the merits of the matter which was raised here. They say: We do not go into the matter but quash the notices, which according to justice Sen was not approved and to that extent the minority judgement is correct. Madam, there is only one more point that I have to refer to and it is that something was stated about the review petition, Mr. Advani has come out now that there is nothing in the main petition Now they have come to the other judgement and have pointed out strictures against Mr. Jagmohan. Poor Mr. Jagmohan he is not a lawyer. With the help of a lawyer he prepares a petition because the entire order had been passed on the basis of nine concessions which two senior counsels of the Supreme Court, who had been in practice for years who know what their business is, we said to have made. Unless the two lawyers were arguing against their clients, they could, possessed of their rational faculties, could never have made these concessions against categorical contrary argument of thier clients. So that as it may, these concessions were relied upon in the judgement. Mr. Jagmohan goes to these lawyers aad asks: "You have made these concessions and I am to pay the price. What have you done?" They said: "We never made thee concessions." He asked: "Are you giving it in writing?" They write the letter bonafide that we have not made these concession 1 to 8 or 7 or one to 9, and making these letters of the two senior counsels a part of the review petition, he exercised the right of seeking review which is given to every citizen. He asks for a review on the basis, that notices have been quashed relaying on concessions in which I am damned. For God's sake, tell me whether these concessions have been fairly and justly made, and if not made, then what is written aginst me, must be taken out. In that he has stated that it has taken over two years to pass the judgement. The case was heard and after that, it took two years for the Supreme Court to pass the judgement. If really his House wants to do any-

thing for this country, for the people who go to Supreme Court, let us amend the Constiution and provide that within three months or six months judgement must be delivered. For two years, three years, four years, they keep on waiting. And we have to helplessly watch. Mr. Jagmohan said that may be since two years have elapsed, some of the submissions made have not been considered. After coming out with very scathing indictment of the two lawyers that their demeanour is bereft of probity, poor. Jagmohan is again roped in for his crude attempt to subvest the process of justice. What is the crude attempt. His lawyers draft a petition; he does not know how to draft it. The lawyers draft the petition; it is presented to the Supreme Court. It is surprising hat there is absolutely no mention of the lawyer who drafted the petition, the senior lawyer who settled the petition. What does it lead you to believe? And ultimately, what is it that the two lawyers wanted? They only wanted to be heard in the matter. I was speaking to an extremely senior counsel who has never been a friend of Congress Party and he said this sort of judicial dictatorship must come to end that they can indict any lawyer, any senior counsel. Without even being heard. If they had been heard, if they had been found to be factually wrong, damn them, do what you want to do with them, take action against them under the professional laws which regulate their behaviour. The cardinal principles of natural justice, Mr. Advani, have been violated by the Supreme Court which makes it nullity—here, I am commenting not on the judges but on the judgement itself,—in the review petition. The review petition judgement being a nullity is not worth the paper it is written on. I feel strongly over the treatment meted out to two senior counsels. It is wholly violative of the principles of justice itslef. It is the practice in the Supreme Court I am told to hear the review petition in the Chamber itself. They say that the two senior counsels were not the pleaders, they were the officers of the court itself. Could these two not have been summoned one morning, one afternoon, one evening or one night and asked what they have to say in the matter? (*Interruption*) Please. This is a very serious matter. It involves the question of the sanctity of the Bar and the entire legal system and I feel very strongly.

SHRI JASWANT SINGH: Then, take it up in the Bar Council. (*Interruption*)

SHRI N. K P. SALVE: Then, why are you taking it up here? You are teaching me? Madam, the hon. Member sitting behind is teaching me that we should take this matter in the Bar Council and the hon. Member sitting in the front is raising it here. (*Interruption*) I say, the whole question should not have been raised here, if we did not want us to review the judgements of Supreme Court. Mr. Advani, you and your party which carried out an unprecedented misrule in the country, established a landmark of corruption, dishonesty and discrimination would never have, perhaps, been exposed as the judgement has exposed in this case. It is your misleeds which have been exposed. Unfortunately, Mr. Advani, you have no forensic background. Therefore, you have no idea as to what you have argued. You have rendered the greatest disservice to the cause of Goenka which you tried to serve. Thank you very much.

SHRI K. MOHANAN (Kerala): Madam, I am neither a lawyer nor a liar.. (*Interruption*) nor a legal luminary, like my esteemed colleague Mr. Salve. Madam, my esteemed colleague, Mr. Salve, is a learned counsel. But I think, his field is different. This is not a case of property, but this is a case

[Shri K. Mohanan]

of propriety. I am sorry to find that my friend, Mr. Salve, was arguing a lost case. I am sorry, free of charge, you have exercised all this labour, in a futile manner.

I am not going into the details of the Supreme Court verdict. I do not want to repeat it all. (*Interruption*) because, the time at my disposal is very limited. You are saying this was not a majority judgement but a minority judgement, strictures made against Mr. Jagmohan. In my opinion, there was neither a majority judgement nor a minority judgement. The judgements were separate. But in essence, three of the judges came to the same conclusion and they challenged the authority of Mr. Jagmohan and passed these strictures. In this context, I would like to draw the attention of the House as well as of my friend, Mr. Salve, to a recent incident which took place in Kerala. This is the resignation of the Kerala Electricity Minister Mr. R. Balakrishna Pillai, from the Cabinet. His resignation was on the basis of comments made by a judge of the High Court at the time of admitting a writ petition against him. Simply a comment at the time of admitting a writ petition...

SHRI N. K. P. SALVE: Was it a single member bench?

SHRI K. MOHANAN: Yes, it was a single member bench. On the basis of the comment of the judge at the stage of filing of a writ petition. Your party, the Congress (I) party in Kerala leading partner of the coalition Ministry and your Chief Minister in Kerala demanded the resignation of Shri Balakrishna Pillai. This is the latest.

SHRI MADAN BHATIA: On a point of order.

SHRI K. MOHANAN: Are you supplying the information? What is it?

THE DEPUTY CHAIRMAN: Let him continue. Please do not interrupt.

SHRI K. MOHANAN: I am not going into the details of these things. It was crystal clear. The verdict of the Supreme Court and the strictures against Mr. Jag Mohan were an impeachment against the former Delhi Lt. Governor, the present Jammu and Kashmir Governor.

SHRI N. K. P. SALVE: What are the strictures against him?

SHRI K. MOHANAN: Are you not reading. On what basis have you argued out all these things? I am really surprised.

SHRI N. K. P. SALVE: Please repeat your argument, I have not understood it.

SHRI K. MOHANAN: I have mentioned it. Although the Judges have given three different judgements but in essence...

SHRI N. K. P. SALVE: Madam, the hon. Member has not understood the basic point. You will argue more cogently if you go through the majority judgment. Ultimately, the majority judgement...

SHRI K. MOHANAN: There is no majority judgement or minority judgment. There are three separate judgements and even though the approach is different, in essence the fact is that the Lt. Governor's acts were arbitrary. That is the essence.

SHRI N. K. P. SALVE: Madam, as we are aware ignorance is bliss, it is foolish to be wise.

SHRI MADAN BHATIA: On a point of information only.

THE DEPUTY CHAIRMAN: No information.

SHRI K. MOHANAN: He is supplying ample information to the House,

and it is becoming impossible for us to speak in this House. What is this? I am not concerned about Indian Express or Sikandar Bakht. I have nothing to do with them.

SHRI N. K. P. SALVE: Why not?

SHRI K. MOHANAN: Please hear me.

SHRI N. K. P. SALVE: Are they lepers?

SHRI K. MOHANAN: If they were wrong, you could have prosecuted them.

SHRI N. K. P. SALVE: Why are you not concerned with them?

SHRI K. MOHANAN: The Supreme Court has given its verdict. Now you are arguing before us. Why don't you go before the Supreme Court and argue out your case? You have read all the files and papers here. I do not think the Supreme Court Judges were deaf or dumb or blind. After hearing all these arguments...

SHRI N. K. P. SALVE: Is this not a comment on the conduct of the Judges?

SHRI K. MOHANAN: I know your respect for the Supreme Court Judges. Now, Salveji cast some aspersions as a whole against the Supreme Court and some individual Judges. I do not think the Supreme Court Judges are deaf, dumb or blind. After hearing and going through all the files they have issued the verdict. You have simply wasted the time of this House in quoting and reading from all these files. (*Interruptions*).

Madam, my point is that the judiciary, legislature and executive are the three pillars of our democratic system.

Through these actions you are devaluating the legislature and the judiciary and you are trying to impose the supremacy of executive above all these institutions. Through these acts only you are trying to bring back those black days of emergency, imposing superiority of the executive over judiciary and legislature. After reviewing the activities of a Lt. Governor, within no time you have replaced him. But when the highest seat of judiciary in the country makes some serious criticism against the Governor, you are defending him, you are blatantly defending him, without any reservation you are defending. This is your approach. You have replaced the Lt. Governor of Delhi within no time. On what basis? On the basis of the review by the executive. But when the Supreme Court, the highest seat of judiciary, has made some serious criticism against a Governor, you are trying to malign the Supreme Court and some individual Judges. This is your approach to judiciary. This is your approach to a democratic set-up. How are you doing this? The Governors are puppets in your hands. You are appointing the Governors, calling them back, asking them to fight elections and come here. And you induct them into the Cabinet and you are asking some of the Judges to resign and come and contest in the elections. Yes, you want committed Governors, you want committed Judges, you ask a Supreme Court Judge to come and contest on our party symbol. Everybody knows that. Yes, you are wedded to having committed Judges, committed judiciary. Proof of that we have seen today.

As far as appointing Governors is concerned, what is your attitude? Even without consulting the concerned State Governments, State Chief Ministers—which is an established practice of the democratic system in this country—you are doing it arbitrarily. You are bypassing the legislature through your Ordinance Raj and executive orders.

THE MINISTER OF STATE IN THE DEPARTMENT OF INTERNAL SECURITY (SHRI ARUN NEHRU): Madam, he cannot go on like that.

SHRI K. MOHANAN: It is Ordinance Raj and through executive orders you ae by-passing the Parliament. You are issuing executive orders in the case of increase in tax and tariff even on the eve of the Budget Session. In this way you are devaluing the status of the legislature, you are devaluing the status of the judiciary, you are imposing your supremacy over these two institutions. You are trying to impose autocracy.

THE DEPUTY CHAIRMAN: Please look towards this side. You see them standing and you do not look this side. When next time you speak, you look at the Chair. I want to say that you have exceeded your time.

SHRI K. MOHANAN: By undermining the status of the legislature, by undermining the status of the judiciary, you are driving towards those dark days of emergency. This is the latest and a very glaring example. Thank you.

श्री जे० के० जैन : उपसभापति महोदया, मैंने प्रारम्भ में ही अपने पाइंट आफ आर्डर पर कहा था कि यह मामला सबजुडिस्ड है और कारपोरेशन ने इस केस को कोर्ट में किया हुआ है इसलिए यह मामला यहां पर डिसकस नहीं करना चाहिए था लेकिन क्योंकि हम प्रजातांत्रिक मूल्यों पर विश्वास रखते हैं, यही कारण है कि आज विरोधी दल की बातों को हम मानकर इस सदन में जैसा वे चाहते हैं उसके ऊपर भी बहस करा लेते हैं लेकिन आपोजिशन को यह समझना चाहिए कि सदन का समय भविष्य में इस तरह की बातों के लिए खराब न करें, यह मेरा उन से अनुरोध है। अभी श्रीमान् एल० के० आडवाणी जी ने "हिंदुस्तन टाइम्स" से यह कहा कि जगमोहन को प्रोटेक्ट नहीं करना चाहिए। मैं उसी हिंदुस्तान टाइम्स की 18 नवम्बर की आर्टिकल के बारे में कहना चाहता हूं, यह उसी अखबार में छपी है जिसमें यह कहा गया है :

let me read this:

"To seek the resignation or dismissal of J&K Governor, Mr. Jagmohan, as a result of the strictures passed against him in the main judgement of the Express building case plus in the petition filed by him seeking a review of the judgement, the raising of the issue when Parliament reopens was decided at a meeting of the Opposition...including BJP and CPM".

Further the writer says:

"Opposition move would be ill advised for several reasons."

मैं सिर्फ यह कहना चाहता हूं आडवाणी जी, कि यदि आप एक पत्र की बात कहते हैं, तो दूसरी बात को भी सामने रख कर इनको सबक लेना चाहिए। यह मैं सिर्फ, आडवाणी जी के लिए कह रहा हूं।

दूसरी बात, हमारे सी० पी० (एम०) के सदस्य, कम्यूनिस्ट पार्टी के माननीय सदस्य बड़े जोर-शोर से बोल रहे हैं गोइंका साहब की हिमायत में और यह इलेस्ट्रेटिड वीकली कौनसी डट का है ? अभी तो ज्यादा दिन नहीं हुए। लेकिन इनके पास पढने का समय नहीं, तोड़-फोड़ में लगे हैं। बंगाल को बर्बाद कर रहे हैं। तब यह कहां थे . . . (व्यवधान)

यह 24 नवम्बर के इशू में लिखा है . . .

SHRI K. MOHANAN: I am from Kerala and not from Bengal. I not from West Bengal.

SHRI J. K. JAIN: Sit down, brother. He doesn't understand who is ruling West Bengal. He goes into the literal meaning of everything. That is the problem with him. Do you dis-

own West Bengal Government? Why don't you say it openly?

SHRI K. MOHANAN: What is wrong with the West Bengal Government?

श्री जे०के०जैन: कम्युनिस्ट पार्टी के बारे में गोइंका जो जिनका यह इतना बड़ा फोटो छपा हुआ है इन स्ट्रेटेड वाकलों में, वह कहते हैं

"Why do you listen to what the communists say? You know they are liars and damned liars." This is the opinion.

SHRI K. MOHANAN: Now you are depending on newspapers. When we were quoting newspapers, you were saying it was newspaper reports. What is this?

SHRIMATI MONIKA DAS (Karnataka): But what do you... (*Interruptions*)

THE DEPUTY CHAIRMAN: Please sit down, Mrs. Monika Das... (*Interruptions*)... Will you please sit down? Don't get excited. He is speaking and let him speak; he is from your own party. There is no point in having a cross-talk. Neither of you is heard. I would request all Members to be very quiet.

(*Interruptions*)

SHRI J. K. JAIN: The 'Illustrated Weekly' says...Please control him.

THE DEPUTY CHAIRMAN: Nobody is going to be uncontrollable from now onwards.

SHRI J. K. JAIN: You know they are liars and damned liars. मोहनन जी हम आपका बहुत सम्मान करते हैं। यह शब्द हम आपके प्रति नहीं कह सकते। ...(**व्यवधान**) लेकिन सुनिये, बैठिये आप... (**व्यवधान**) लेकिन जो व्यक्ति आपको इस तरह से झूठा और महाझूटा कहते हैं, कम से कम उनका पक्ष आप किसलिए ले रहे हैं, यह तो इस सदन में जानकारी दीजिए।

उपसभापति जी, आज हमारे कम्युनिस्ट भाई अपनी खुद्दारी, अपना आत्म सम्मान, अपनी सैल्फ-रेस्पेक्ट सब खो चुके है। यह जाहिर हो चुका है इस बात से और भारतीय जनता पार्टी, इसका तो कोई वजूद नहीं, अस्तित्व नहीं।

दूसरे सदन में देखिए इसकी क्या हालत है, सारे देश में देखिये कि इसकी क्या हालत है? मारे मारे फिर रहे हैं लेकिन इनको कोई रेकोग्निशन देने को तैयार नहीं है। तो मैं अपने कम्युनिस्ट भाइयों से निवेदन करता हूं कि ऐसी फिरकापरस्त और साम्प्रदायिक ताकतों के साथ अपना गठबंधन हमेशा-हमेशा के लिए तोड़ दो...

एक माननीय सदस्य: वरना खत्म हो जायेंगे। ...(**व्यवधान**)

SHRI K. MOHANAN: You are a fraud.

THE DEPUTY CHAIRMAN: Mr Mohanan, please keep quiet.

(*Interruptions*)

SHRI K. MOHANAN: Where are the communal forces? Communal forces were not there in Kerala... (*Interruptions*)

श्री जे० के० जैन: मेरा आपसे निवेदन है कि जितना समय हमारे विरोधी दल के सदस्य मेरा खराब कर रहे है, वह आप मेरे समय में से न काटें, तो बड़ी कृपा होगी।

THE DEPUTY CHAIRMAN: Then we will have to sit longer. If they disturb, then we will have to sit till tomorrow.

श्री जे० के० जैन: सिकन्दर बख्त, वह नाम है दिल्ली के इतिहास में, जिसे बच्चा-बच्चा जानता है। मैं पिछले 25 वर्षों से दिल्ली के सामाजिक, राजनीतिक जीवन से संबंधित रहा हूं। मैं जानत

[श्री जे० के० जैन]

हूं यह वही सिकन्दर बख्त है, जिसने गुड़ स्कैण्डल दिल्ली के अंदर किया, यह वही सिकन्दर बख्त है, जिसने दिल्ली के अंदर स्टील स्केण्डल किया और यह वही सिकन्दर बख्त है, जिसने अपने पुराने कारनामों के आधार पर लैंड, बिल्डिंग स्केण्डल किया है, जो हिंदुस्तान के इतिहास में उन शब्दों में लिखा जाएगा कि आने वाली पीढ़ी इस पार्टी के सदस्यों को कभी क्षमा नहीं करेगी । आज इस सदन को और सदन के माध्यम से देश की जनता को गुमराह करने का यह दुस्साहस भारतीय जनता पार्टी के हमारे ये सदस्य और उनके साथ लगे हुए पिछलग्ग कम्युनिस्ट पार्टी के सदस्य कर रहे हैं । देश की जनता जागरूक है । बहादुर शाह जफ़र मार्ग जिसके ऊपर से रोजाना लाखों व्यक्ति निकलते हुए थू-थू करते हैं । कहते है सड़क के ऊपर बिल्डिंग खड़ी कर दी गई । और तो और, अरे, प्रैस की दुहाई देने वालो भारतीय जनता पार्टी के सदस्यो जरा 'इंडियन एक्सप्रैस' में काम करने वाले पत्रकार बंधुओं से पूछो, वहां काम करने वाले पत्रकार बंधु कहते हैं कि हमारे नाम के ऊपर यह आलीशान भवन बनवा दिया गया और हमारे लिए स्थान तहखाने के अन्दर है । आज मैं आपको अपने साथ लेकर चलना चाहता हूं । कितनी मंजिल के भवन बना दिए गए, पत्रकारों का किस प्रकार से मिसयूज, पत्रकारिता का मिसयूज और दुहाई देते हैं 'फ्रीडम आफ प्रैस' की और पत्रकार बंधुओं को तहखाने में बैठाते हैं । ...(व्यवधान)

THE DEPUTY CHAIRMAN: Please do not disturb.

श्री जे० के० जैन : बताइये, 6 मंजिल की बिल्डिंग और उसमें से कितनी मंजिल में पत्रकार बंधु बैठे हैं या वहां प्रैस लगा हुआ है ? वह तहखाना जो कानून से कुछ रद्दी भरने के लिए, कुछ और मशीन का सामान भरने के लिए एप्रूव होता है, आज फ्रीडम आफ प्रैस की दुहाई देने वालो, तुमने हमारे पत्रकार बंधुओं को एक रद्दी की टोकरी की जगह में बैठा रखा है । आपको शर्म आनी चाहिए । आज आप ऐसे व्यक्ति को प्रोत्साहन देकर देश के अन्दर एक ऐसी घिनौनी परम्परा स्थापित करना चाहते हो, लेकिन यह सदन, यह देश के जागरूक नागरिक आपकी इन मंशाओं को पूर्ण होने नहीं देंगे ।

SHRI JASWANT SINGH: Madam Deputy Chairman, could you ask him to repeat.

SHRI J. K. JAIN: Mr. Jaswant Singh, please go through the proceedings to morrow. Please do not interrupt me. उपसभापति महोदया, कम्युनिस्ट भाई लेबर वैलफेयर की दुहाई देते हैं फ्राम द रूफ टाप । नेशनल हैराल्ड में 1976 के अन्दर वैलफेयर एक्टीविटीज के लिए कर्मचारियों के बैठकर भोजन करने के लिए मात्र 300 से लेकर 315 एफ ए आर के लिए प्रार्थना पत्र दिया और 1977 के अन्दर भारतीय जनता पार्टी के वर्क्स एंड हाउसिंग मिनिस्टर सिकन्दर बख्त ने उस 315 एफ ए आर को रद्दी की टोकरी में फैंक दिया । क्या है यह ? वैलफेयर एक्टीविटीज की दुहाई देते हो 300 की जगह 360 एफ ए आर अपने आका को आप सैंक्शन करते हो और सिर्फ 315 एफ ए आर जब नेशनल हैराल्ड मांगता है तो उसकी एप्लीकेशन को आपने अपने ही रिजीम के अन्दर रद्दी की टोकरी में फैंककर रिजैक्ट कर दिया । यह दुमुही बात है । आपने अपने हाथ से अपनी कब्र को खोदा है और आपके माध्यम से यह बातें मैं इस सदन के सामने कह रहा हूं । उपसभापति महोदय, कितनी बातें हैं । यह सरकार माननीय श्री गोयन्का जी को कोई पुरस्कार या रिवार्ड नहीं देगी । लेकिन मैं जानता हूं कि सी० पी० आई०, सी० पी० एम० और भारतीय जनता पार्टी मिलकर उनको जरूर पुरस्कार देगी, किस बात के लिए, शायद देश में ही नहीं सारी दुनियां में ऐसी मिसाल नहीं मिलेगी। बिल्डिंग लाइन से आगे जाकर बेसमेन्ट बना दिया, कितना उल्लंघन ? और जगमोहन लेफ्टिनेन्ट गवर्नर दिल्ली के, जिसका

एक शानदार इतिहास रहा है, जिसने दिल्ली के विकास के लिए कितने ही काम किये, यदि वह जगमोहन इन लोगों के काले-कारनामे को लेकर कोर्ट के दरवाजे पर गये, तो ये कहते हैं कि जगमोहन को डिसमिस करो । बिल्डिंग लाइन के आगे तहखाना बना दिया गया... **समय की घंटी**...मैं अडवाणी जी को आमंत्रित करता हूं, शायद इनको कुछ लाज आती हो तथा वहां जाना चाहें तो मेरे साथ चलें । जो बातें मैंने कही हैं, क्या उसमें एक बात भी असत्य है, यह उठकर कहें, इसमें एक भी असत्य है, यह सत्य नहीं है ।

उपसभापति महोदया, बहुत से फेक्ट्स इस सदन में और उस सदन में देश की जनता के सामने आये हैं । कितनी दूमुंही बातें, कितनी दोहरी बातें अपनायी गयीं । जिस समय सीमेंट लेना था, तो एप्लीकेशन के अंदर श्री गोयन्का जी ने लिखा कि मुझे डबल बेसमेंट बनाने के लिए सीमेंट चाहिए, देखिए जरा । जिस समय नक्शा पास करवाने का हुआ, तो कहते हैं कि मुझे छोटा सा प्लेटफोर्म बनाना है नीचे । देखिए, गुमराह करने के क्या-क्या तरीके अपनाएं, कितने मुखौटे इनके मूंह पर चढ़े हुए हैं ? क्यों नहीं कहते कि जनता को बरगलाने के लिए, जनता को गुमराह करने के लिए, भारतीय जनता पार्टी को इंडियन एक्सप्रेस गुट ने 1977 तक जो साथ दिया, उसके लिए इन्होंने सड़क के ऊपर भवन बनवा कर एक घिनौना पुरुस्कार गोयंका जी को दिया..... (**समय की घंटी**)...

उपसभापति महोदया, बहुत सी बातें हैं। अन्त में मैं सिर्फ यही कहना चाहता हूं कि देश की जनता इनकी लफ्फाजियों से, इनके इन काले कारनामों से गुमराह होने वाली नहीं है और कितना भी तुम चांद पर थूको, वह थूक तुम्हारे ऊपर आकर पड़ेगा । जगमोहन के प्रशासन का इतिहास दिल्ली के एक-एक नागरिक की जुबां पर है । इन शब्दों के साथ मैं अपने विरोधी दल के भाइयों से निवेदन करता हूं कि इन लोगों के अंदर जिस तरह से एक गिद्द प्रतीक्षा करता है कि कोई मांस का टुकड़ा आये, उस पर मैं चोंच मारूं, कुछ कंस्ट्रक्टिव परपोजल्स ये सदन के सामने रखे बजाय इसके यह ढूढते हैं उस मांस के लोथड़े की तरह कोई टुकड़ा आये और हम उस पर मूंह मारें । सुप्रीम-कोर्ट ने जजमेण्ट दिया । तो यह बड़ा भारी कंस्ट्रक्टिव इस्यू ले आये कि जगमोहन को डिसमिस करो । बड़े शर्म की बातें हैं । बताइए, देश के निर्माण के लिए, देश की बेहबूदी के लिए कौनसे ऐसे इस्यू आज तक हमारे विरोधी दल के भाइयों की ओर से आये है ।

इन शब्दों के साथ उपसभापति महोदया, मैं आपका धन्यवाद करता हूं कि जो कुछ तथ्य मेरे राजनीतिक और सामाजिक जीवन के 25 वर्षों में सिकन्दर बख्त के बारे में आये, वह मैंने आपके इस सदन के माध्यम से देश की जनता के सामने रखे हैं । धन्यवाद ।

SHRI P. BABUL REDDY: Madam, I first appeal to all hon friends here that this is not a matter that should be considered with emotion. Very high principle is involved. We take pride of the fact that...

SHRI J. K. JAIN: When you talk of principle, take this lesson for yourself.

SHRI P. BABUL REDDY: Madam, you should control him. He is uncontrollable, but still you can control him.

THE DEPUTY CHAIRMAN: Yes, I would. Jain Saheb, let him continue.

SHRI P. BABUL REDDY: We take pride of the fact that we are the biggest democracy. Rule of law is the soul of democracy. Law is not respected of men, but respecter of principles. Very many, many friends here,

[Shri P. Babul Reddy]

have got up to discuss this subject. Of course, Mr Jain, did not discuss anything on the subject, but everything else he discussed. Mr. Salve tried to touch this subject, but, unfortunately *he had no time to read the judgments.* So, he went on saying—minority judgment and majority judgement. Madam, I have got all the three judgements. One judgement is of 207 pages—the leading judgement written by Justice Sen. Another judgement is by Justice Venkataramaiah—seven pages judgement. He agreed on the two major points and on the third point, he said, it is not necessary to go. He also agreed that the notices should be quashed. The third Judge, Mr. Justice Mishra said: I agree with the reasoning of my learned brothers and quash the notices but on the third point, I will not go into. So, what are the three points? We have to analyse and then see. There is no question of any minority judgement or majority judgement. All the three Judges have agreed that the two notices were involved in these judgements. One was issued by the Delhi Municipal Corporation on 1st March, 1982. Second was issued on the 10th March 1932 by Delhi Development Authority. Both the notifications were attacked by the Indian Express people. Three questions broadly arose. One is: whether the action of Lt. Governor was vitoted for want of *bona fides* in other words it was *mala fied?* Second: was the Lt. Governor has got any jurisdiction to issue or prompt the officers to issue this notice. Thirdly, whether on facts, there is a breach of the lease that was granted or whether the notice for demolition is justified? This is the third *point. On the first two points,* all the three Judges agreed. I will now demonstrate. There is no dispute now that so far as Justice Sen is concerned, on all the three points... (*Interruption*) Please hear me. I am quoting from the judgement of Justice Venkataramaiah, from the judgement of Jusitice Mishra. On the third point, other two judges said: We will not go into it. My hon'ble friend, Mr. Salve said: how did they entertain? Did Justice Sen alone entertain the writ petition? All the three Judges entertained the writ petition. All the three Judges quashed the two notifications. So the question of not entertaining does not arise at all. All the three Judges agreed that it is entertainable. One quashed on three grounds; two others quashed on two grounds. Now, we have no dispute that Justice Sen quashed on all the three grounds. Now, we will take up Justice Venkataramaiah's judgement. My hon'ble friend, Mr. Salve, said that if the action of Jagmohan were found to be *mala fide* by the other Judge also, then it would be a case asking for his stepping down.

SHRI N. K. P. SALVE: No, no.

SHRI P. BABUL REDDY: No, you said arbitrary. I am repeating what he has been saying, let him recall about Justice Venkataramaiah, he said, it is a non application of mind, arbitrary and there is no question of... (*Interruption*). My friend got up and tried to say that in England, there were a number of occasions when Ministers acted arbitrarily, but they did not resign. Now, we are not on that point. We will proceed on that basis. There is no dispute about the fact that Justice Sen quashed the notification on all the three grounds. He held; Mr. Jagmohan has no jurisdiction as Lt. Governor. He held that his action is not *bona fide.* He has acted under extrameous consideration. Third, there is no justification at all to issue the notices. Now, I will not waste the time of the House by reading the judgement of Justice Sen.

THE DEPUTY CHAIRMAN: Please do not waste time. Your party has only five miutes.

SHRI P. BABUL REDDY: Madam, if I may say so, don't accuse me. I had taken pains to read this judge-

ment. You have allowed time to speak to those people who have not read the judgement, a person who has read the judgement cannot be shut down. So, please bear with me by giving me another five minutes. Madam, one hour and fifteen minutes we have on this side. How is it that I have been allowed only 5 minutes? Since I have read the judgement, I had to lose time. So, please hear me. Now, I am taking the judgement of Justice Venkataramaiah. Whether he has said: it is extraneous consideration or not? It is very short. Only ten lines I am reading. I am reading at the beginning itself.

"I have gone through the judgement which my learned brother, Justice A. P. Sen has, just now, delivered. I agree with that Shri Jagmohan, Lt. Governor of Delhi, Second Respondent herein has taken undue interest in getting the impugned notices issued to the first Petitioner. Undue interest in *mala-fide*.

SHRI N. K. P. SALVE: Certainly not.

SHRI P. BABUL REDDY: Then you don't know law, I am sorry to say. You may know accounts, but not law.

He says:

"....has taken undue interest in getting the impugned notices issued to the petitioner and his action, which has come up for consideration in this case, is not consistent with normal standards of administration."

What else is it?

"I am satisfied that the said notices were issued by the authorities concerned under the pressure of the Second Respondent."

He exerted pressure.

" The question whether the notices should be issued or not does not appear to have been considered independently by the concerned administrative authorities before issuing the notices."

Now the Government of India is taking a different stand. Originally they appeared through Parasaran, and Parasaran withdrew from the case when the Government refused to withdraw the notices. Then Mr. Lal Narain Sinha came into the picture. He conceded that the Lt.-Governor has no jurisdiction. That is what Mr. Justice Venkataramaiah also said.

"Shri Lal Narain Sinha, learned counsel for the Union Government, has submitted that the Lt.-Governor was a total stranger to the lessors and had no sort of power or right under the lease deed to set in motion the issue of any notice against the lessees."

So Justice Venkataramaiah also held that the Lt.-Governor had no jurisdiction in the matter and he was a stranger. That is what Justice Sen also held. So far as the other judge, Mr. Justice Mishra is concerned, he said:

"I have persued the judgement prepared by my brother Justice A.P. Sen and also the judgement prepared by my brother Justice Venkataramaiah. While I agree with them that the impugned notices threatenign re-entry and demolition of the construction are invalid, have no legal value and must be quash for reasons detailed in the two judgements, ...I am of the view that the other questions involved in the case are based upon contractual obligations."

That is the third question whether there is a breach of the lease or not. So, on the first two points all the judges have agreed. There is no question of any majority or minority.

SHRI N. K. P. SALVE: You read page 103 of the judgment to know what Mr. Lal Narain Sinha's argument has been. (*Interruptions*) Madam, on a point of order.

SHRI P. BABUL REDDY: Please don't count this time against me.

SHRI N. K. P. SALVE: Madam, things should not be distorted in this House or in that House. Certain things are being attributed to Shri Lal Narain Sinha, the Attorney-General. ..

SHRI VIRENDER VERMA: What is the point of order?

SHRI N. K. P. SALVE: The point of order is, in violation of the requirement of the rules, persistently a person who is not here is being maligned. He says that I have not read the judgement. Each page of mine is marked and Madam, I don't get it marked by my juniors. Page 103—because the review petition was also brought into the picture—shows what exactly Mr. Lal Narain Sinha argued. He stated: "The learned counsel for Respondent No. 1 while pointing out ..."

SHRI S. W. DHABE: What is the point of order?

THE DEPUTY CHAIRMAN: I cannot give my opinion without hearing him.

SHRI N. K. P. SALVE: In attributing certain things to the former Atterney-General, there is a clear violation of the rules.

SHRI LAL K. ADVANI: The simple question is whether his reference to Shri Lal Narain Sinha is against the rules. That is all.

SHRI N. K. P. SALVE Attributing a wrong statement to Mr. Lal Narain Sinha and maligning him, a former Attorney-General, is against the rules.

SHRI LAL K. ADVANI: You attacked Mr. Sikander Bakht without basis.

SHRI N. K. P. SALVE: Madam, only one minute and I have done. It says: "The learned counsel for Respondent No. 1, while contending that the Lt.-Governor as an Administrator has no function as the lessor or its delegate only to the extent that as an Administrator he had to keep himself informed of any violation of law in the Union Territory of Delhi with the administration of which he was concerned. It was, therefore, legitimate for Lt. Governor to have kept the authorities informed and though he had no independent power of his own, he could place the material gathered by him with the Lessor, that is, the Union of India, Ministry of Works, and that is what Jagmohan had done.

THE DEPUTY CHAIRMAN: There is no point of order. It was only a point of information.

SHRI P. BABUL REDDY: Madam, I can ask one of my friends even to forego his time. So, let me make my points.

Now I shall read out from Justice Venkataramaiah's Judgement.

"Shri Lal Narain Sinha, appearing for the Government, said that Jagmohan is an utter stranger to the lease; he has no right..."

I am reading from page 51.

"The learned Attorney General has throughout in the course of his arguments on behalf of Respondent No. 1, the Union of India, mentioned that the Lt. Governor of Delhi has nothing to do with the Lessors and whereyer the name of the Chief Commissioner, Delhi, appears, it should be scored out because that office is not there."

This is what he repeated once again. So, if he questions—

Mr. Salve should take note and analyse...

THE DEPUTY CHAIRMAN: No, it is the Minister who will note and analyse.

SHRI P. BABUL REDDY: If you analyse the judgment on the three questions, only on one question the other two judges said, "We will not

express any opinion."; on the first two questions, whether it is *mala fide* action or not and whether he has jurisdiction or not, all the three judges have concurred. Now, I shall only bring a few facts stated in the judgment:

> Jagmohan assumed office as Lt. Governor on 17-2-1980; that was a Sunday. On the very same day he sent for the files from the Delhi Municipal Corporation. On 20th he called for files from the DDA. On 29th he sent people to seal and put locks on the Zonal Building Office of the Delhi Municipal Corporation. On 1st March he held a press conference. On the very same 1st March notices were sent.

All these facts were stated in the Judgement. So far as this case is concerned, at one stage the Government of India wanted to concede that these two notifications had to be quashed. This is what Justice Sen says:— I am reading from page 52—

> "This case has many twists and turns. The hearing commenced on April 27, 1982 and was concluded on...September, 1983 with intermittent breaks. I regret to say that the ambivalent attitude adopted by Respondent No. 1—the Union of India—and the hostility of Respondent No. 2—Jagmohan—prolonged the hearing which lasted as many as 43 days. This resulted in a colossal waste of public money and valuable time of the Court. On April 29, 1982—within two days—Shri Nariman, the learned counsel for the Petitioner, has concluded his arguments and Shri Parasaran, the learned Solicitor General, made a statement that he wanted to obtain instructions as to whether the impugned notices issued by the Zonal Engineer, Municipal Corporation of Delhi on 1st March, 1980 and by the Engineer—Officer, Land Development Office, dated 10th March 1980, for the forfeiture of the lease of plots 9 and 10 by the Government in favour of the Indian Express Newspapers Limited and threat to re-enter upon the leased premises where the new Express building is built thereon and for removal . . . In the facts and circumstances of the case, we must say that the request for the adjournment asked for by the Solicitor General was reasonable and it was granted. After 10 days he came and said the Government of India did not agree and let the judgment be delivered on merits, and then he withdrew from the case. The Attorney General came into the case. The Attorney General time and again said that the Lt. Governor has no jurisdiction to issue those notices."

It is on that basis the judgment was delivered. It is on that basis 5.00 P.M. that the judgment was delivered. Madam, I want to say only this. On a fair reading of the judgment, the inescapable conclusion is that Mr. Jagmohan has acted *mala fide*, not in the ordinary course, but with some extraneous considerations in his mind, and brought pressure on the officers to issue this notice. Than what should follow? To uphold the democratic principles, he should resign. Madam, it is not open to my friends to say that they, sitting in Parliament here with a majority, can over rule the judgment of the Supeme Court. Under our jurisprudence, just as the Supreme Court cannot make a law, Parliament also cannot render a judgment on the verdict of the Supreme Court. Even if the Supreme Court is wrong on a particular interpretation of its judgment, then the normal course for Parliament is to amend the law, make it retractive and then say that the judgment has no effect. That is how we have to nullify the judgment. You cannot set aside the judgment of the Supreme Court. Once you start setting aside the judgments of the Supreme Court, there will be no democracy The Supreme Court itself has said that the legislatures in this country have no power to render judgment.

[Shri P. Babul Reddy]

There is no legislative judgment in our country. We cannot overrule the judgment, all of us sitting together here, and we can only amend the law and make it retroactive and then nullify the judgment. So, there is no question of saying that the judgment is wrong. What the three Judges have held is the principle. What is the principle now? I would like to quote one or two instances. Mr. Sanjiva Reddy, when he was the Chief Minister, one observation was made by the Court. After all, the matter was a very simple one. Instead of going to Nellore district, he had gone to Kurnool district with a political motive. He did not file a counter-affidavit, but resigned. Shri Pratap Singh Kairon also was asked to resign. It was also a very simple case. A doctor was transferred in Punjab and charges were sought to be framed against him. They were not even framed. He came to the Supreme court. It was held the action was *mala fide* and it was a violation of article 14. Some of our friends here may know that *mala fide* is always violative of article 14. So, if it is proved that it is *mala fide*, action under article 32 a writ petition can directly be filed in the Supreme Court. That is what Mr. Sen has said in his judgment. *Mala fide* action is always violative of article 14. So, the principle is well established. I appeal to my friends also to think about this dispassionately. If the reading of the judgment leads to the conclusion that be, Shri Jagmohan acted with *mala fide* intentions and exerted pressure on the officers, there is no escaping from the fact. Otherwise, democracy will be in danger in this country. After all, we are not respecters of Mr. Jagmohan or Mr. Sikandar Bakht. If Mr. Sikandar Bakht is wrong, we will condemn Mr. Sikandar Bakht also. (*Interruptions*). Now, with regard to Mr. Sikandar Bakht, one Judge went into it and the other two Judges did not go into it. Only one Judge went into it and he has said that the permission granted by Mr. Sikandar Bakht, the then Minister of Works and Housing, for the construction of the new Express Building with an increased FAR of 360 with double basement for installation of the printing press was not in violation of the Master Plan for Delhi, of the Zonal Development Plant of the D-II Area of the MCD. This is what Mr. Sen has said. The other two Judges did not go into that. Then, Madam, how can our friends say something about Mr. Bakht?

SHRI H. R. BHARDWAJ: I am sorry to intervene. You kindly care to read what Shri Venkataramaiah has said. He has said that neither a Minister nor the Lt. Governor can dole away the property of the Union of India. Therefore, the permission of the Minister is no permission. (*Interruptions*)

SHRI P. BABUL REDDY: It is not doling away. Nobody can dole away. It is true. But the question is not one of doling away. Mr. Justice E. S. Venkataramaiah has categorically said, "I am not going into that question; I am not going into that."

SHRI N. K. P. SALVE: Because it does not suit you?

SHRI P. BABUL REDDY: Nobody has said that the property is doled out. There is no contention at all that somebody doled it out.

SHRI N. K. P. SALVE: But Mr. Venkataramaiah also has said that the entire matter should be looked into afresh.

SHRI P. BABUL REDDY: Madam, my friend, Mr. Salve, is right here. Because he has not gone into the question, it is left open, it is still open to the Municipal Corporation to issue notice if there is a violation. They can still consider it. But how do you say it is wrong? Two learned Judges did not say that what Mr. Sikander Bakht did was wrong. But one Judge said, he is not wrong. (*Interruption*). How can you say that Mr. Sikander Bakht is wrong? But the question is not of Mr. Ram Nath Goenka on the one hand, and Mr. Jagmohan, on the other. Mr. Ram Nath Goenka may be a good or bad man, may be a capi-

talist or for welfare of the society; that is not the point. The point is of democratic principles. When the highest court in the land found particularly that there were extraneous considerations, what should be the result? Now, you claim that we have started a new chapter. A young and dynamic Prime Minister has come. He is going to uphold cleanliness. I have nothing against it. He is going on right lines on so many things. Let him go on the right lines on this also. It is my appeal to Prime Minister to look into the matter carefully. The only course open is to respect that judgement. So my submission is that the Prime Minister would do well, as he has done in so many things well, to uphold this democratic principle and ask Mr. Jagmohan to resign. If he does not resign, then show him his place. That is my submission.

श्री लक्ष्मी नारायण : उपसभापति महोदया, जब हम स्कूल में पढ़ते थे तो एल्जेब्रे का एक सबक होता था । उस एल्जेब्रे में क्या लिखा है, उसको मैं आपके समक्ष रखना चाहता हूं । हम कहते हैं कि दो और दो जमा चार होता है, लेकिन एल्जेब्रा कहता है कि दो और दो जमा पांच होता है । वही हालत हमारे विरोधी दल के दोस्तों की भी है । साल्वे साहब ने बहुत अच्छे तरीके से जजमेन्ट को पढ़कर सुनाया है । लेकिन इसके बावजूद भी इन लोगों का वही हाल है कि पंचों का फैसला सर माथे पर, लेकिन परनाला वहीं गिरेगा . . . (**व्यवधान**) । जरा सुनिये । मालाफाइड किस को कहते हैं? एक मंत्री महोदय थे एट वन टाइम, उन्होंने स्वयं यह मुनासिब समझा कि इसकी परमिशन नहीं मिलनी चाहिए और कुछ दिनों के बाद जो उस वक्त के वाइस चेयरमैन, डी०डी०ए० के थे, श्री बुच, उनसे कहा गया कि आप जाइये, इंडियन एक्सप्रेस के मैनेजमेन्ट से मिलिये और उनको सेटिसफाई कीजिये । दिस इज आन रिकार्ड । वे खुद नहीं गये, अपने आफिसर को उन्होंने भेजा । मैनेजमेन्ट तैयार नहीं हुआ । उसके बाद परमिशन दे दी गई । इसलिए मैं पूछना चाहता हूं कि क्या मालाफाइड यह हुआ कि एक बार तो मना किया लेकिन दूसरी बार मान लिया गया या मालाफाइड यह हुआ कि भारत सरकार की जमीन को बचाने के लिए, समाज के हित को ध्यान में रखकर काम किया गया या यह मालाफाइड है? आप इन दोनों बातों को देखिये और पहचानिये कि सही क्या है? हमारे गांवों में एक मिसाल मशहूर है कि सावन के अंधे को हरा ही हरा नजर आता है । आप यह समझिये कि एक आदमी सावन के महीने में अंधा हो जाता है । आप जानते हैं कि सावन के महीने में चारों तरफ हरियाली ही हरियाली नजर आती है । इसलिए जो व्यक्ति उन दिनों अंधा हो जाता है उसको चारों तरफ हरा ही हरा नजर आता है । जिन लोगों का कैरेक्टर या जिस पार्टी की बुनियाद ही मालाफाइड हो उनको हर चीज मालाफाइड ही नजर आती है । यही बात मैं आपके सामने रखना चाहता था । हमारे जैन साहब ने 'नेशनल हैराल्ड' उसकी कैंटीन की बात, सीमेन्ट की बात और बहुत सारी दूसरी बातों का जिक्र किया है । लेकिन एक बात मैं आपके नोटिस में लाना चाहता हूं कि जब हम बहादुरशाह जफर मार्ग से महरौली की तरफ को निकलते हैं तो कुतुबमीनार की तरफ निकल जाते हैं लेकिन जब कुतुबमीनार से दिल्ली गेट की तरफ निकलते हैं तो 'इंडियन एक्सप्रेस' की नई बिल्डिंग सामने आ जाती है और एक्सीडेन्ट होने से बचाकर चलना पड़ता है । आपने इस बात को नोटिस किया होगा, एक बड़ी बिल्डिंग सड़क के सामने आ जाती है । उस पर ट्रैफिक वन-वे करना पड़ा, इसलिये कि गोयन्का साहब का कन्स्ट्रक्शन चल रहा था । मालाफाइड किसको कहते हैं? उन्होंने इस केस में स्टे आर्डर ले लिया यह आर्डर चलता रहा और कन्स्ट्रक्शन भी चलता रहा । दोनों काम चलते रहे परसों मैं अपने एक दोस्त के साथ बाहर गया । उसने कहा कि गाना सुनोगे, बोर हो रहे हो । उसमें कव्वाली का भी एक टेप था । उसके सारे बोल तो मुझे याद नहीं लेकिन उसकी एक-दो लाइन याद हैं मैं कह देता हूं साफ-मेरे हाथों में है इन्साफ के पैसा बोलता है । ऐसे कुछ उसके यह बोल थे

[श्री लक्ष्मी नारायण]

अब आप अंदाजा लगा सकते हैं कि यह कैसे शुरू हुआ, कहां शुरू हुआ। एक और बात है उसमें कि मेरे तीन हैं पक्के यार मुल्ला पंडित और थानेदार। तो उसमें चंदे का भी जिक्र है। तो मैं अपने विपक्ष के नेताओं से यह बोलना चाहता हूं कि उसका पैसा बोल रहा है और एक गलत आदमी की वकालत के लिये आप यहां बात करने के लिये खड़े हो गये और यहां पर आपने इतना लम्बा-चौड़ा बवंडर खड़ा कर दिया है। आपको जगमोहन से क्या एलर्जी है वह खूब लम्बा चौड़ा इंसान है, खूबसूरत है, काम करने में तेज है, भागता और दौड़ता खूब है फिर क्या एलर्जी है? उससे आपको जाती, एलर्जी है और वह यह है कि आपने 1977 में कोशिश की थी जब कि शाह कमीशन बैठा हुआ था, आपने उसको अप्रोच किया था कि कुछ शब्द इंदिरा जी के खिलाफ बोल दो तो हम तुम्हें गवर्नर बना देंगे। लेकिन उसने कहा कि मैं तो किताब लिख रहा हूं और तुम कहते हो कि उसके खिलाफ बोल दो। आपने उस समय कितने ही लोगों को खरीदने की कोशिश की थी और हम पर इल्जाम लगा रहे हैं कि हमने पोलिटिक्स को गंदा कर दिया है, लोगों को खरीद कर। जिनके दामन पर खुद खून, बदनामी और खरीदने का दाग लगा हुआ है वे हमारे से ऐसा कहने हैं। अभी हमारे दोस्त ने कहा कि प्रधानमंत्री अच्छा कर रहे हैं। लेकिन वे अच्छा नहीं कर रहे हैं बल्कि बहुत अच्छा कर रहे हैं। तो बहुत अच्छा शब्द को हटा दिया आप जरा बताइये कि उन्होंने कौन सा ऐसा काम हाथ में लिया जिसे उन्होंने पूरा करके नहीं दिया। हां, एक मसला बाकी है। आप दुहाई, देते हैं फ्रीडम आफ स्पीच और फ्रीडम आफ प्रेस की ओर जिस तरह से आप गैर-जिम्मेदाराना स्पीचें करते हैं, लिखते हैं, उसकी तरफ ध्यान दिलाते हुए मैं प्राइम मिनिस्टर से रेक्वेस्ट करना चाहता हूं कि उधर जरा ध्यान दीजिये। आप फ्रीडम आफ प्रेस किसे कहते हैं? यह कि आप जिसके चाहे खिलाफ कुछ भी लिख दें। दिल्ली के मेयर महेन्द्र सिंह साथी हैं उन्होंने एक मीटिंग में यह कह दिया कि फ्रीडम आफ प्रेस क्या है। आपने देखा होगा कि पिछले कुछ समय से पत्र और विशेषकर इंडियन एक्सप्रेस उनके खिलाफ बोलता रहा मैंने एक दिन उससे कहा कि आप इसका खंडन कर दें। मेयर साहब ने बयान दिया जब जाकर थोड़ी शांति हुई। मैं गांव का रहने वाला हूं। मैं ज्यादा पढ़ा लिखा नहीं हूं। हमारे गांवों में जानवर होते हैं, उनकी चार टांगें होती हैं और उनका एक मालिक भी होता है। जब तक मालिक के हाथ में डंडा होता है और जब तक वह उनको मारता है तो वे सीधे चलते हैं लेकिन जब वह डंडे को कमर के पीछे कर लेता है तो वे जानकर जो बिजली के खम्भे होते हैं उससे रगड़ खाकर जाते हैं, जो दीवारें हैं उससे रगड़ खाकर जाते हैं या जो चारपाइयां रहती है उनसे रगड़ खाकर चलते हैं लेकिन फिर जब मालिक डंडा लगा देगा तो वे फिर बिल्कुल सीधे चलेंगे। असल में हिन्दुस्तान की डेमोक्रेसी में लोगों ने फ्रीडम आफ स्पीच और फ्रीडम आफ प्रेस के मायने गलत समझ लिये हैं। ये कहते हैं कि फ्रीडम आफ प्रेस, और फ्रीडम आफ स्पीच में जिसको जो चाहो कह दो और जिसके खिलाफ जो चाहो लिख दो, कोई सुनने वाला नहीं है, कोई पूछने वाला नहीं है। इसमें फ्रीडम आफ प्रेस, मैं कहता हूं कहां गई, इस पर कहां आघात लगा जब इंडियन एक्सप्रेस के अखबार से कहते हैं सरकारी विभाग, एल० जी० भारत सरकार, दिल्ली प्रशासन और दिल्ली कारपोरेशन गैर-कानूनी कन्सट्रैक्शन मत करो। उन्होंने यह नहीं कहा कि हम पुरानी बिल्डिंग को गिराना चाहते हैं। उन्होंने इस पर आपत्ति की जो वे नई बिल्डिंग बना रहे थे, जबर्दस्ती बना रहे थे, कायदे कानून के खिलाफ बना रहे थे तो इससे फ्रीडम आफ प्रेस पर कहां से छापा पड़ा यह जरूर आप हमें बता दें। सावन के अंधे को हमेशा हरा ही नजर आता है। इन पर गोयन्का साहब की मेहरबानी हो जाती होगी, किसी न किसी प्रकार से

और इसलिये वे उनके पक्ष में कुछ न कुछ बोलना चाहते हैं और कुछ न सही तो कम से कम कल इंडियन एक्सप्रेस की हैड लाइन्स में आ जायेगा कि फलां फलां नेताओं ने हमारी जान बचाने की कोशिश की। लेकिन सवाल यह है कि (**समय की घंटी**) मैडम, आपने दो बार घंटी बजा दी है मैं नहीं चाहता कि आपको तीसरी बार घंटी बजानी पड़े मैं अभी एक मिनट में समाप्त कर रहा हूं। मैं यह निवेदन करना चाहता हूं, बड़े अदब के साथ यह कहना चाहता हूं कि माइनार्टी, मेजोरिटी डिसीजन की बात आ गई, जजमैन्ट हो गया कहते हैं साहब आप जजेज के खिलाफ बोलते नहीं हैं। मैं एक छोटी सी बात कहना चाहता हूं। जज प्रदर्शन करते हैं, बोट क्लब पर धरना दे सकते हैं, पब्लिक मीटिंग्ज में बोल सकते हैं, सेमीनार में जा कर बोल सकते हैं, सरकार के खिलाफ भी दूसरों के खिलाफ भी बोल नहीं सकते तो क्या मुझे यह अधिकार नहीं है मैडम, अगर कोई जजमेंट लिया जाये उस पर मैं अपनी राय दे सकूं कि यह गलत है या सही है, कोर्ट उसको न बदले, मैं कब कहता हूं कि बदल दें।

लेकिन इतनी फ्रीडम आफ स्पीच होनी चाहिये। अगर जजेज को यह फ्रीडम हो सकती है कि वह यूनियन बना सकते हैं मुजाहरा कर सकते हैं, नारे लगा सकते हैं तो क्या मुझ को यह फ्रीडम आज की तारीख में नहीं है कि मैं यह कह सकूं कि जजमैन्ट का नहीं दिया गया है। यह राय देने का मुझे अधिकार होना चाहिये मैं आपका बहुत धन्यवाद करता हूं कि आपने मुझे समय दिया।

श्री सत्य प्रकाश मालवीय : माननीय महोदय, स्वस्थ लोकतान्त्रिक परम्पराओं की याद दिलाने के लिये विरोध पक्ष ने इस विषय को आज चर्चा के लिये प्रस्तुत किया है लेकिन यह भी लगता है कि जो लोग सत्ता में हैं उन्होंने इतिहास से सबक नहीं सीखा है। एक इलाहाबाद हाई कोर्ट का फैसला हुआ था 12 जून, 1975 को उससे सबक नहीं सीखा गया और इत्तेफाक से वह फैसला देने वाले भी जग मोहन थे और आज भी जग मोहन साहब के विषय पर चर्चा हो रही है और उसका कारण क्या है? (**व्यवधान**)

SHRI LAXMI NARAIN: He was not involved in the Allahabad High Court Judgment.

श्री सत्य प्रकाश मालवीय : आ रहा हूं उसका कारण क्या है? जग मोहन साहब ने 18 फरवरी, 1980 को लेफ्टीनेन्ट गवर्नर के पद का भार ग्रहण किया। बाबुल रेड्डी साहब ने कहा कि उस दिन रविवार था। उनको इतनी जल्दी थी कि रविवार को ही उन्होंने म्युनिसिपल कारपोरेशन के कमिश्नर को बुलाया और कहा कि एक्सप्रेस बिल्डिंग की फाइल हमारे सामने ला कर रख दें। 20 फरवरी को यह फाइल उनके सामने रखी गई। 29 फरवरी, 1980 को म्युनिसिपल कमिश्नर के माध्यम से जोनल, इंजीनियर (बिल्डिंग्ज) के कार्यालय का ताला तोड़ा गया और उनकी अलमारी तोड़ी गई। 1 मार्च, 1980 को तब के लेफ्टीनेंट गवर्नर ने दिल्ली में प्रेस कान्फ्रेन्स करके कहा कि एक्सप्रेस बिल्डिंग को नोटिस जारी किया जा रहा है। एक नोटिस जारी किया गया 1 मार्च, 1980 को और दूसरा नोटिस जारी किया गया 10 मार्च, 1980 को। इन्हीं दोनों नोटिसेज को सुप्रीम कोर्ट के तीन जजों ने सभी जजों ने अपने आदेश से क्वेश कर दिया है इसीलिए सुप्रीम कोर्ट के जजों को बाध्य हो कर अपनी टिप्पणी लिखनी पड़ी–

> "In the facts and circumstances, I am constrained to hold that the impugned notices dated March 1, 1980 and March 10, 1980 were not issued *bona fide* in the ordinary course of official business for implementation of the law or for securing justice but were actuated with an ulterior and extraneous purpose and, therefore, wholly *mala fide* and politically motivated.

[उपसभाध्यक्ष (श्री पवन कुमार बांसल) पीठासीन हुए]

सुप्रीम कोर्ट ने कहा कि लेफ्टीनेंट गवर्नर ने अपने अधिकारों का दुरुपयोग

[श्री सत्यप्रकाश मालवीय]

किया । ऐसे अधिकार का प्रयोग किया जिसका उनको कानून के अन्दर कोई हक हासिल नहीं था । लेफ्टीनेंट गवर्नर ने राजनीतिक दुर्भावनाओं से नोटिस जारी किया और लेफ्टीनेंट गवर्नर ने एक ऐसा आदेश जारी किया जिस आदेश को जारी करने का उनको कोई अधिकार नहीं था । यह लेफ्टीनेंट गवर्नर साहब कौन थे । जिनके लिए इसी मुल्क के एक जज ने उसके पहले एक फैसला लिखा है जिसकी ओर मैं आपका ध्यान आकर्षित करना चाहता हूं । पेराग्राफ 13.143 में लिखा है–

"By allotting an alternative site to the Arya Samaj promptly, Shri Jagmohan appears to have attempted to cover up his earlier high-handed action in ordering the demolition of the temple building."

दूसरे पैराग्राफ 13.144 में कहा है—

"The Commission is of the opinion that Shri Jagmohan has abused his position and misused his powers in ordering the demolition of a building used as a place of worship."

यह ओब्जरवेशन जस्टिस जे० सी० शाह का है जो शाह कमिशन के अध्यक्ष थे । मैं यह ध्यान दिलाना चाहता हूं कि छोटे से छोटे अपराधों के लिये भी इस बात का प्रावधान होता है कि अगर एक आदमी एक बार सजा पा जाए और उसी जुर्म में यदि दोबारा पकड़ा जाए तो उसको सख्त सजा दी जाती है । यहां आज क्या हो रहा है ? श्री जग मोहन एक बार अपने अधिकारों का दुरुपयोग करते हैं, एक बार राजनीतिक दुर्भावनाओं से अपने पद का दुरुपयोग करते हैं लेकिन उनको तरक्की दी जाती है, जम्मू काश्मीर का गवर्नर बना करके भेजा जाता है । इसलिए मेरा बहुत आदरपूर्वक यह आग्रह है, बराबर यह इतिहास रहा है, ग्रेट ब्रिटेन में एक मिनिस्टर थे प्रोफ्यमो उन्होंने मिनिस्टर के पद से केवल इसलिए इस्तीफा दिया कि पार्लियामेंट में वे असत्य बोले थे । निक्सन साहब अमरीका के प्रेजीडेंट थे, वाटर गेट कांड पर किसी अदालत का फैसला नहीं हुआ था केवल जुडीशियल कमेटी ने आब्जरवेशन दिया था उनके खिलाफ लेकिन उन्होंने राष्ट्रपति के पद से अपना इस्तीफा दे दिया । अभी हिंदुस्तान का उदाहरण दिया गया ठीक यही फैसला हुआ था "पोलिटिकली मोटीवेटेड एण्ड एक्स्ट्रानिअस कंसीडरेशंस"। जस्टिस एस०आर० दास का कमीशन था, सरदार प्रताप सिंह कैरो मुख्य मंत्री थे पंजाब के और केवल इस फैसले के बाद उनको अपने पद से त्यागपत्र देना पड़ा था । टी० टी० कृष्णामाचारी थे मूंदड़ा एल० आई० सी० काण्ड में उसमें जस्टिस एम० सी० चागला न्यायिक जांच आयोग बैठाया गया था और जब जस्टिस एम० सी० चागला ने अपना आब्जरवेशन दिया, वे सुप्रीम कोर्ट के नहीं थे केवल कमीशंस आफ इन्क्वायरी एक्ट के अंतर्गत उनका न्यायिक जांच आयोग बैठाया गया था लेकिन जब उन्होंने मूंदड़ा एल० आई० सी० कांड में अपनी टिप्पणी लिखी तो टी०टी० कृष्णामाचारी ने दिसम्बर, 1958 में इस्तीफा दे दिया और उसके बाद दुबारा जब उसी मामले की जांच चल रही थी कुछ अधिकारियों के खिलाफ तो फिर प्रधान मंत्री हो गये थे श्री लाल बहादुर शास्त्री और लाल बहादुर शास्त्री जी के समय में जस्टिस चागला साहब के आब्जरवेशन्स के संबंध में जो कुछ अधिकारियों के खिलाफ था जब जांच बैठानी चाही तो कृष्णामाचारी साहब ने विरोध व्यक्त किया और उसमें वे सहमत नहीं थे लेकिन लाल बहादुर शास्त्री जी के मंत्रि परिषद से दिसम्बर, 1965 में उन्होंने अपना त्यागपत्र दे दिया । यही स्वस्थ परम्परा है कि जब न्यायालय की कोई टिप्पणी हो जाये, न्यायालय का कोई फैसला हो जाये, किसी के विरुद्ध हो जाये तो किसी भी लोकतांत्रिक पद्धति में न्यायालय की बात को हर एक को मानना चाहिए । सुप्रीम कोर्ट इस देश का सर्वोच्च न्यायालय है, सुप्रीम कोर्ट के जजों ने एकमत होकर उस नोटिस को क्वैश किया और उन्होंने जो कुछ भी आब्जरवेशन किया उसकी चर्चा मैं अब नहीं करना चाहता हूं लेकिन जो रिव्यू

फाइल किया गया उसमें सुप्रीम कोर्ट के जजों ने बाध्य होकर यहां तक कहा कि जगमोहन साहब ने झूठ बोला है, असत्य बोला है और रिव्यू पिटीशन को देकर के इन्होंने कन्टेम्ट आफ कोर्ट तक करने का काम किया है । रिव्यू पिटीशन के फैसले की ओर में आपका ध्यान आकर्षित करना चाहता हूं :

"The petition was based on totally false allegations and was an attempt to subvert the course of justice. It is lamentably lacking in candour and want of probity in making factually incorrect statements, and thereby casting aspersions on the court."

अब और क्या रह जाता है । क्यों जगमोहन साहब को रखना चाहते हैं क्यों जगमोहन साहब से इस्तीफा नहीं मांगते हैं । मेरा इस सदन के माध्यम से इस सरकार से आग्रह है कि किसी भी गवर्नर को जो वहां की मंत्रि परिषद नियुक्त करती है आज जो भारतवर्ष का काउंसिल आफ मिनिस्टर्स है जो भारत की मंत्रि परिषद है उसका यह कर्तव्य है, उसका यह संवैधानिक दायित्व है कि वह जगमोहन से त्यागपत्र मांगे और अगर वे त्यागपत्र नहीं देते हैं तो उनको अपने पद से बर्खास्त कर देना चाहिए । मैं स्टेट्समैन के एक आर्टीकिल की ओर ध्यान आकर्षित करके अपनी बात समाप्त करना चाहता हूं क्योंकि उसमें नार्म्स की बात की गयी है । यह आर्टीकिल है 21 नवम्बर, 1985 का यानी 7 अक्टूबर, 1985 को फैसला होता है और सुप्रीम कोर्ट का और जब रिव्यू पिटीशन भी खारिज हो जाता है तो उसके बाद जगमोहन साहब ने काश्मीर में बैठकर कहा :

I am not going to resign from the governorship because the Government of India is fully protecting me.

यह प्रेस कान्फ्रेंस में उन्होंने कहा । प्रेस कान्फ्रेंस के ठीक तीसरे दिन "स्टेट्समैन" में श्री सहाय एडीटर हैं उनका एक आर्टीकल "क्लोज लुक-गवर्नर एण्ड ला आफ कन्टेम्ट" है और उसमें उन्होंने कहा है आखिर में

A CLOSE LOOK—Governor and Law of Contempt by S. Sahay:

The question is of setting up a standard. As things stand now, there have been severe strictures against a person who is Governor now but was the Lieutenant Governor of Delhi when the deed was done. Constitutional propriety would have suggested immediate resignation. But the person concerned has no intention of doing so especially because he thinks that justice has not been done to him. He is entitled to his convictions, but the nation has the right to set its own norms.

तो मैं फिर सारे राष्ट्र और राष्ट्र के जो लोग हैं उनकी राय की ओर ध्यान आकर्षित करना चाहता हूं ।

सत्ता पार्टी के लोगों को इतिहास से सबक सीखना चाहिए 12 जून, 1975 को इलाहाबाद का फैसला आपने जब नहीं माना, आपकी तत्कालीन प्रधान मंत्री ने उस फैसले की अवहेलना की, सारे संविधान को बदल दिया, तब जो चुनाव कानून था, रिप्रेजेंटेशन आफ पीपुल्स एक्ट को संशोधित करके पूर्व प्रभावित कर दिया तो इमरजेंसी लगानी पड़ी . . . आज जो इंडियन एक्सप्रेस का केस है,, मूलत: 12 जून, 1975 को उत्पन्न हुआ क्योंकि 12 जून, 1975 को फैसला हुआ, 25 जून, 1975 को आपातकाल लगा और आपातकाल के समय लोगों के मूल अधिकारों का हनन हुआ—(**समय की घंटी**)—प्रेस के अधिकारों का हनन हुआ, और लोगों को बिना मुकदमा चलाए जेल में भेजा गया ।

उसको उजागर हिंदुस्तान के समाचार-पत्रों ने किया, हिंदुस्तान के समाचार-पत्रों के सम्पादकों ने किया, इंडियन एक्सप्रेस जैसे अखबार ने किया और इसी दुर्भावना से पीड़ित होकर जब पुन: 1980 के बाद कांग्रेस पार्टी की सरकार आई, तो यह फैसला लिया गया ।

[श्री सत्य प्रकाश मालवीय]

लेकिन आप भूलिये नहीं कि किसी भी देश की संसद और न्यायालय से भी ऊपर उस देश की जनता होती है और जनता ने वोट देकर के न केवल आपकी सरकार को खत्म कर दिया था, बल्कि नौ-नौ प्रदेशों में कांग्रेस पार्टी की पराजय हुई थी, दिल्ली से कांग्रेस पार्टी हार गई थी, उत्तर प्रदेश में 85 की 85 सीट्स कांग्रेस हारी थी और तब की आपकी प्रधान मंत्री, श्रीमती इन्दिरा गांधी स्वयं श्री राज नारायण द्वारा पराजित की गई थीं ।

इसलिए मैं आपसे कहना चाहता हूं, हाथ जोड़ कर मैं आपसे आग्रह करना चाहता हूं कि आप इतिहास के सबक को सीखिये, वरना हिंदुस्तान इतिहास दोहरायेगा और जो लोग अदालत की अवहेलना करते हैं, जो लोग अदालत के आदेश को नहीं मानेंगे, उनको इस देश के 70 करोड़ लोग कभी भी माफ नहीं करने वाले हैं ।

SHRI PARVATHANENI UPENDRA: Mr. Vice-Chairman, I am sorry that this issue is being tackled more from a legal angle than from the political and Constitutional point of view. Here, the main question is whether a Constitutional functionary should be immune from strictures made by the highest court of the land and what should be his reaction when some serious strictures are made. And if you take the remarks of the Supreme Court, you will find that they accused him of all the charges, particularly false averments, attempt to subvert the course of justice and contempt of court. Three charges are levelled against him in the judgment. I can quote these three small sentences. At one place they say: "We are constrained to observe that the review application is lacking in *bona fides*, based on false averments and constitutes a flagrant abuse of the process of court." Secondly they say: "This crude attempt on his part by filing review application on totally false averments in an attempt to subvert the course of justice." Thirdly, they say: "His conduct in casting serious aspersions on the court, virtually amounts to gross contempt of the court." There are the strictures made by the Supreme Court and they have also accused him of misuse of powers, encroachment on others' authority and acting *mala fide*. In the circumstances, when such serious strictures are made, a Constitutional functionary has to respond to that and it is his duty as a man who has taken oath under the Constitution that he should have resigned voluntarily, and if not, he should have been removed by the Union Government and the President. But neither of it has been done.

Even if you look at it from the political angle, Mr. Jagmohan has become a hot potato for the ruling party for a long time and any prudent leader of the ruling party and otherwise, would not hesitate to drop such inconvenient persons as hot potatoes. Mr. Jagmohan, wherever he has been put, whether in Delhi or Goa or in Kashmir, has acted erratically and has come to public ridicule and criticism. His action in Kashmir, we may recollect, smacked of dictatorial behaviour and also a conspiracy against the Constitution itself. He concealed 12 MLAs in the Raj Bhavan and on a festival day, he toppled a legally-elected Government which enjoyed a majority. I am, particularly, referring to this because he gave inspiration to Mr. Ram Lal, 1500-2000 Kms. away to do a similar thing later. (*Time-bell*) Sir, you are asking me to sit down? You have allowed others to speak for long.

THE VICE-CHAIRMAN (SHRI PAWAN KUMAR BANSAL): I am not asking you to sit down. I have just warned about you the time.

SHRI PARVATHANENI UPENDRA: You have given the bell after only three minutes.

THE VICE-CHAIRMAN (SHRI PAWAN KUMAR BANSAL): Your party has been allotted four minutes.

I have given the first bell after four minutes. I am not asking you to sit down.

SHRI PARVATHANENI UPENDRA: This is not fair. You should give as much time as is given to the speakers from other parties.

Sir, even from a political point of view, the Governor should have been removed, but this has not been done. Therefore, the demand from our side, from this side, for his removal is wholly justified.

Sir, I would also like to take this opportunity to refer to one or two relevant aspects because, in the Business Advisory Committee, the Chairman has agreed to allow us to raise one or two pertinent points, in this connection. I would like to refer to the mode of appointment of Governors itself, which is being followed by the present Government.

I am sorry to say that they have given a go-by to the age old and healthy convention of consulting the State Governments before appointing the Governors. It was followed unscrupulously by Pandit Jawaharlal Nehru and intermittently by the subsequent Governments, but now, I find, this has been completely ignored. Of course, the Home Minister was kind enough to give information, to show a small mercy to the Chief Minister by informing him a few minutes before the teleprinter gave the news. I am, particularly, referring to the recent change of Governor in Andhra Pradesh. I am not objecting to the person appointed there. I am very happy that one of our colleagues in this House has been appointed. She is a very charming and able lady and I am sure she would make a success in Andhra Pradesh. But the method of appointment is very very objectionable. This is not a vacancy which has been filled. The existing Governor has been shifted for no reason. A very senior man, who has been the President of the Congress Party and a Central Minister, who has been appointed only one and a half years back, has been shifted to some other State for no reason, this also without consulting the Chief Minister with whom he developed rapport. If you start changing the Governors who, in their places of appointment, during their term, have established a rapport with the State Governments concerned, particularly, where the Governments are run by Opposition, it is incumbent on the part of the Union Government to take the Chief Ministers into confidence so that good relations prevail between the Governors and the State Governments. I am very sorry to say, this principle has not been followed in the case of Andhra Pradesh.

There is another thing also. I feel, while appointing the Governors, you must make sure that you pick up people of eminence, who can bring to their office a certain dignity and also act with rectitude. I know some of the Governors. Sir, you may not believe, they are more interested in other things than their functions as the Constitutional heads of the States concerned. We have two Governors from our State, who are supposed to be in Bombay and Patna. But most of the time, they are in Hyderabad inaugurating dance performances and so on. Of course, I am not making any complaints. But if they are meant to perform certain duties in their place of appointment, they should do it and not go to some other State and create problems there. With these words, I take my seat.

SHRI KHUSHWANT SINGH (Nominated): Mr. Vice-Chairman, Sir, since the subject is being discussed threadbare in the two Houses. We have heard a lot of startling oratory from Mr. Advani and Mr. Salve and much heat has been generated, I will confine myself to only three points.

[Shri Khushwant Singh]

Firstly, what are the non-issues in this subject, what is the real issue and, finally, the role of Mr. Jagmohan. What is the non-issue? To me, clearly, it is the freedom of the Press. It is not involved at all in this case. Only one of the three judges made a passing reference to this—Justice Sen—which, in the legal gargon, I take it, went something like on *obiter dicta*. the other two Judges did not even refer to this. Also the issue of freedom of press has really been raised by the press itself and by the Opposition Members when it is not an issue and I think many people have certain illusions about the press. A press running a newspaper is like running any other business. It is a commercial proposition. You are running a newspaper business because you want to make money. And if you can keep up a facade of independence, if you can create the impression that your paper has more integrity than the other, you draw more circulation and you get more advertisement, but nothing beyond that. And we editors certainly know how much freedom of the press we have enjoyed. I have been in half a dozen papers myself. Now, to Mr. Goenka it is no exception. He is a press baron, a very successful press baron. He has made a successful business out of the press, probably more than any of the others. It is a success story in itself. He has made a lot of money. I wish him luck if he can make more but he is no paragon of virtue.

When it comes to the freedom of the press, he has sacked more editors than all the other newspaper chain combine, Mr. Birla, Mr. Jain or the Iranis. He cannot hold his head in front of the people and say I have to do this because I am fighting for the freedom of the press. There is also a kind of impression that the newspaper office is a sort of temple or a citadel of freedom. They may have been true if it was not a commercial business.

Here what we are faced with is, you simply put up a printing press at one place and then you construct 20 storeys. All that you do to make a lot of money. I think it is legitimate too, whether it is Express Towers in Bombay, the Hindustan Times building here or the Express building here. I am not objecting to their money-making in that way, but I don't think it is fair then to violate laws and thereafter claim that you are being victimised because the freedom of the press was not in a happy situation with the administration. Therefore, I repeat, freedom of the press is not an issue in this case. The real issue in this case is the future of Delhi. We have to answer a simple question, do we want Delhi to go the way that Calcutta has gone or Bombay is going or do we want to keep our city clean, neat and well-organised? And I think here you have to bear in mind what is providing Delhi with its future. It is the master plan. It is the municipal laws, it is the FAR, the ratio in which certain buildings can be constructed and they make common sense. No one has a right to construct a building and not provide in it the proper space for lavatory, for canteen, for parking of motor cars. You cannot raise buildings and put the burden of parking cars on public property and create a jam in that place. You have to ensure all these facilities while dealing with the place. You simply answer these things. Does the new Express building violate the master plan? The answer is yes. Does the new Express building violate municipal laws? The answer is yes. Now what more do you want to know? Does the new building violate rules relating to parking space? The answer is yes. You have only to go there to see how chaos has been created by not providing parking space. People cannot even walk there.

Mr. Vice-Chairman, probably, you are not a Delhiwallah, but this road has a very sinister history. This site is named as Bahadur Shah Zafar Marg because the emperor's three sons were shot there by Col. Hudson. That is why it is known as 'khooni darwaza' and the tradition continues. More people are killed on the road in that one murder mile from khooni darwaza to Hardinge Bridge than any other place in Delhi and the statistics will bear me out. If this precedent that has been created in giving the Indian Express more FAR, will be followed by the other buildings in this area—the Times of India, the National Herald, the Sun and all the others—and they have all applied for it and there is no reason why they should not get this permission—the chaos that is there now will be worse confounded.

Sir, just a few words about Mr. Jagmohan. Many unkind words have been said about this man. I am not concerned with what the judgement says. I am not a lawyer. But let me tell you, I have seen this city of New Delhi when it did not exist. I am one of those who saw the city come up. No single person has done more to preserve the greenary and order in this city after Independence than this one man, Jagmohan. If New Delhi is today the greenest capital of the world, if the housing is better than anywhere else, we owe this man a lot for this and to use unkind words for this man shows an enormous amount of ingratitude. This man has shown efficiency and integrity in the discharge of his duties.

And, finally. Sir, one thing which makes me unhappy—and I address this particularly to the Law Minister because I am a lay man, my law is rusted. I do not remember anything—is the time taken between the argument and the judgement, which is over two years. I believe there is a judgement of the Calcutta High Court where it has been held that a Magistrate commits a contempt of his own court if he takes more than eight months to pass a judgement and I believe, the Supreme Court Bar Association passed a resolution—I speak subject to correction because I am not a member—that a judge should pronounce judgement within six months. Now here we have a situation where the judges not only wait for two years even when concessions are made, but I believe there are in the Supreme Court pending at least 50 cases where the judgements have not been pronounced for two years and in some cases for four years. Now if this does not amount to a scandalous state of affairs, then I do not know what are the words that one can use. Mr. Law Minister, can you do anything in this way that a rule should be passed that in every case that has been heard, the judgement must be written that very evening while their minds are fresh and not wait for weeks? I do not even understand this business of six months. It is in their own interest, it is in the interest of clients, it is in the interest of the country and the judicial system that when a case has been heard and argued, the judgement should be written and pronounced that very evening. Thank you.

SHRI MADAN BHATIA: Mr. Vice-Chairman, I just want to add to what my hon. friend has said because this is vital information which I want to share.

THE VICE-CHAIRMAN (SHRI PAWAN KUMAR BANSAL): But kindly be very brief.

SHRI MADAN BHATIA: I respectfully submit that I have had an experience of a very vital case in the Supreme Court and that experience I would like to share with the hon. Members. This was an appeal which was filed by Sanjay Gandhi against his conviction in Kissa Kursi Ka case. That case came up for hearing be-

[Shri Madan Bhatia]

fore three Judges of the hon. Supreme Court. I was assigned the task of arguing the constitutional aspect of the case on behalf of Sanjay Gandhi. I continued with my arguments. In reply to my arguments, the Government counsel addressed the Court and then I stood up for counter-reply. My counter-reply started at about 10-30 or 10-45 a.m. When I had addressed the hon. Judges for half an hour, the hon. Judges told me that I could give my arguments exhaustively in writing and they would consider my arguments when they had heard the case even on merits and they would deliver a consolidated judgement dealing with the constitutional aspects as well as on merits. This was at about 12 o'clock and the hon. Judges told me that in those circumstances I could cut short my arguments and close them. In view of this assurance which was given to me by the honourable Judges, I closed my arguments. Thereafter, the Counsel for Mr. Shukla stood up. He spoke for about one hour, and the case went on upto 2.30 to 2.45. When he had finished his arguments, lo and behold! What happens. The honourable Judges immediately called the stenographer and dictated the order: "We have heard the arguments on the constitutional aspects. All the constitutional arguments are rejected." Then I stood up and said: "It was on your lordships assurance that I stopped my arguments and your lordships had given me the assurance that these arguments will be dealt with ultimately on the basis of my written arguments... (*Interruptions*)... I am giving an experience. There were heated exchanges between me and their lordships, and the only explanation for this particular order which was made by the honourable Judges was, "We have a right to change our mind." Then I said, "Within a period of one hour and a half, what has transpired on account of which your mind could have changed?"

SHRI GHULAM RASOOL MATTO (Jammu and Kashmir): Mr. Vice-Chairman, Sir, Article 92 of the Jammu and Kashmir Constitution states, "If at any time the Governor is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution, the Governor may ,by Proclamation..." Then, clause (5) of this says, "No proclamation under sub-section (1) shall be issued except with the concurrence of the President of India" Article 356 of the Indian Constitution stipulates:

> "If the President on receipt of a report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this constitution, the President may by Proclamation —"

Sir, I am quoting these provisions of the two Constitutions only to state that a drama was enacted on 2nd of July, 1984. The Governor of Jammu and Kashmir, Mr. Jagmohan, took away 12 people and dismissed the duly elected Government of that State. That was in 1984. I am grateful to Mr. Upendra and others who had supported me on this issue. Now the point at issue is that this matter alone, this opportunity that has been offered today, was enough for me to pour out what all I have in my mind agains Governor Jagmohan but, as a representative of the people and as a responsible Member of Parliament, I have to view objectively as to what is the situation today and what are the strictures passed by the Supreme Court on Mr. Jagmohan as Lt.-Governor of Delhi.

Sir, I have been studying this judgment and other papers relevant

thereto for several days now and I am convinced that Lt.-Governor Jagmohan had acted correctly and in consonance with law while he was Lt.-Governor of Delhi. I do not like to go into the legal aspects as have been pointed out here. My firm conviction is that this is also a minority judgement in which the strictures have been passed. But Mr. Babul Reddy is of a different opinion. I would like to ask the jurists of this country to enter into a national debate whether it is a minority judgment or a majority judgment. As a layman I can't say much, but I have only one thing to say. As pointed out by Sardar Kushwant Singhji, we have to view this is the simple parameter whether what Mr. Goenka did was correct. My personal opinion is that he has started with illegal permission, unauthorized construction over and above the so-called permission, violations of municipal and other bye-laws and the Master Plan, parking on the road side and, evasion of conversion charges amounting to Rs. 3.30 crores—which nobody pointed out. I, as a small businessman, have calculated that this sum of Rs. 3.30 crores has gone up to Rs. 5 crores now if you include the interest also on that sum. So, infirmities of the legal system have been pointed out by my friend, Shri Kushwant Singh. It took six years for the Judges to write the judgement and two years between the conclusion of the judgement and delivering of the judgement.

The original permission that was granted to Mr. Goenka was for construction of the press. They converted it into a commercial venture giving the owners an income of Rs. 1 crore per year. Even if this permission is considered legal, there is absolutely no jusiification in (a) not paying the conversion charges, (b) building over and above the so-called permission and (c) doing parking on the road side.

The court says that the violation of the municipal bye-laws which are not compoundable under the statutory provisions, should be compounded. When they are not compoundable, how can they be compounded! Recent inspection after the Court judgement reveals further massive unauthorised constructions over and above what was there at the time of issue of the original notice.

The Court's strange inference that the powers enjoyed by the Chief Commissioner of the rank of Joint Secretary are not enjoyed by the Lt. Governor, is not correct, when right from 1966 all the Lt. Governors, even in the Janata period, enjoyed these powers, if this contention is taken into consideration.

The Court admits that the "Express" newspaper had not only violated the Municipal laws but had also evaded payment of the conversion charges.

Mr. Jagmohan has been charged with lightning speed. I do not know why he should not act with lightning speed. If on the basis of an information received by a functionary, he feels that some law is being violated, why should he not take immediate action? In fact, we must give kudos to him for his acting speedily in this matter.

One point that has been missed about this lightning-speed affair is that Mr. Jagmohan took over on 17th February, 1980, and the stay order was obtained by the "Express" newspaper on 7th of April. I wonder, if Mr. Jagmohan had any malice towards Mr. Goenka, within these two-and-a-half months whether he could not have got the demolition process completed. But he waited so that the process of law should be completed. I think, what he has said and Sardar Saheb has also said is that it is for beautification of the city of Delhi. It is very essential that we must now think over it. As Mr. Salve has also said, the "Times of India" has reported that it was originally 14,440 sq. ft. That has been increased to 19,890 sq. it. This is a controversy. If I say what

[Shri Ghulam Rasool Matto]

I say, I feel what I say. And my other friends in the Opposition feel differently. I would request and suggest that a parliamentary committee should be set up to go into the matter, whether Goenkas have really violated laws, and if they have really violated laws what action should be taken. (*Time / bell*) This is my last point, since you have given the bell, Sir. I would request the hon. Law Minister kindly to listen to me. The Supreme Court has both the original and the appellate jurisdiction. But when it hears matters in the exercise of the original jurisdiction, there is no appeal provided from its decision. The requirement of the due process of law and natural justice is kept only limited to one appeal. Except when the matter is decided by a Constitution Bench of five Judges, there should be available at least one appeal before a larger Bench of the Supreme Court. The remedy of review is also restricted. It is now disposed of by circulation in the chamber without any right to party or the counsel to be present at the hearing of such review. I hope the Supreme Court and the Law Commission will give due consideration to my suggestion in this behalf.

Thank you very much.

SHRI MURLIDHAR CHANDRAKANT BHANDARE (Maharashtra): Mr. Vice-Chairman, Sir, I rise today, with considerable anguish in my heart and say what I have to, with all humility. I wish I could avoid it. But since my name has been mentioned, I deem it fit to clarify my position.

Both, in this House and outside, I have been fighting for the cause of strong and independent judiciary. For more than 33 years that I have practised as an Advocate, I have endeavoured to maintain the highest standards of professional ethics. It has been an article of faith with me to hold the highest regard and respect for the judiciary in our country and to uphold the rule of law. It is thus an irony of fate that today I find that by one stroke of pen my reputation as a lawyer is put in jeopardy by the highest court of the land, while disposing of a review petition of Shri Jagmohan by circulation in chamber without giving notice to the parties or to me or to other counsel. I have thus been condemned unheard. The disparaging remarks against me in the review judgment are thus in violation of the principles of fairplay and natural justice nay the cardinal principle of justice itself that no man shall be judged unheard.

In the matters of making disparaging remarks against persons or authorities the Supreme Court has on more than one occasions laid down that no disparaging remarks should be made unless the party whose conduct is in question is before the Court or has an opportunity of explaining or defending himself. Any decision contrary to the principles of natural justice is invalid in law and a nullity. The observations against me and the other counsel in the review judgement are equally null and void.

The Bar has always viewed with concern the power of the Supreme Court to dismiss a review petition by circulation without any opportunity of being heard, being given to the parties. Such power ought not to extend to passing speaking orders without affording any opportunity to the party and to make observations against the counsel who have a duty both towards their clients and to the Court in the administration of justice without any notice to them. Such a procedure is violative of an Advocate's fundamental rights guaranteed under Articles 14, 19 (1) (a), 19 (1) (g) and Article 21 of the Constitution. It is a matter of regret that the order passed by the Supreme Court not only violates the principles of natural justice but also is in violation of my Fundamental Rights under Articles 14, 19 (1) (a), 19 (1) (g) and 21 of the Constitution.

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The Supreme Court has repeatedly held that the judicial pronouncements must be judicial in nature and should not normally depart from sobriety, moderation and reserve. The language used against me and my colleagues at the Bar in the Judgement is a deviation from the code of conduct laid down by the Supreme Court itself for the judges in giving their judgment. That all this has come from the highest court of the land before whom have been regularly practising for the last several years is again a matter of disappointment. If the Court considers lawyers as officers of the Court, which indeed they are, it becomes the duty of the Court to ask the lawyers before expressing any opinion on the conduct of the lawyers.

Let me state a few relevant facts so that the whole issue is placed before this august House and through it before the entire country in its proper perspective and context.

Express Newspapers submitted a plan in which they *inter-alia* proposed the construction of two basements and construction of basement beyond the ground floor coverage of the main building. The basement is permitted within your own building and you cannot construct it in front of your biulding and extend it upto the road. The bye-laws do not permit. These were objected to by the Municipal Corporation of Delhi as they were not permissible under its building bye-laws. The Express Newspapers accepted the validity of the objection and resubmitted the plans for sanction after deleting one basement and the portion beyond the ground floor coverage. After these deletions and corrections, the building plans were sanc-
6.00 P.M. tioned by the Municipal Corpo ation of Delhi. However, when the Indian Express actually constructed their building, they constructed the second basement and also a basement beyond the plinth level which were specifically rejected by M.C.D. and deleted by Indian Express. Such construction was clearly illegal as being not sanctioned by the building plans. The Express Newspapers were thus guilty of a conscious violation of law. The notice given by the Corporation related and restricted itself to the demolition of unauthorised constructions and not the demoltiion of the building, as was loudly proclaimed by the Indian Express. Even if these portions are removed, the building will remain in the Press can continue Just the area in the occupation of tenants will be less. Obviously, there was no valid answer to the notice of the Municipal Corporation. There was no question of infraction of freedom of the press. Since (however, the court came to the conclusion that it was an integrated transaction along with the other notices given by the Land and Development Officer and there was no independent application of mind, it struck down this notice through giving full permission to the Municipal Corporation to proceed afresh against the Indian Express according to law.

I now come to the concession attributed to me by Justice Sen.

The concession attributed to me by Justice Sen is as follow:

> "He (Mr. Bhandare) further states that the Municipal Corporation will compound the deviation which is minimum on payment of such composition fee as is payable under the bye-laws. The Ld. counsel states that this shall not be treated as a precedent for others."

Let me point out how this concession is not borne out by the judgements of the court.

There are three separate judgements delivered by the Hon'ble Judges constituting the bench hearing these writ petitions, and the directions in the said judgements—

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material to today's discussions—are as follows:—

A. Hon'ble Mr. Justice A. P. Sen has opined:

> "It is also directed that the Municipal Corporation of Delhi shall compound the construction of the double basement of the new express building, the excess basement beyond the plinth limit and the underground passage on payment of the usual composition fee".

B. Hon'ble Mr. Justice Venkataramaiah, while quashing the said notices has directed:

> "It is open to the Delhi Municipal Corporation to examine the matter afresh independently and to take such action that may be open to it in accordance with law. The Delhi Municipal Corporation may, if so advised, instead of taking any further action against the petitioners permit the petitioners to compound the breaches, if any, committed by them in accordance with law".

C. Hon'ble Mr. Justice R. B. Misra, while agreeing with the impugned notices threatening demolition of construction must be quashed, has opined:

> "Whether there has been a breach of the contract of lease or whether there has been a breach of the other statutues regulating the construction of building are the questions which can be properly decided by taking detailed evidence involving examination and cross-examination of witnesses".

Thus, according to the judgement of the court, the Municipal Corporation of Delhi shall proceed afresh against the petitioners for deviations in construction from sanctioned plans in accordance with law.

It is clear that both Shri Justice Venkataramiah and Shri Justice R. B. Misra, have not recorded the concessions attributed to me by Shri Justice Sen. On the contrary, the Judgement of Hon'ble Shri Justice Venkataramiah runs counter to such alleged concessions and he specifically permits the Municipal Corporation of Delhi to proceed according to law, and compound the breaches only if permissible under the law. He makes it clear that the Corporation should take action only in accordance with the law. I reiterate that I did not make a statement before the Supreme Court that the deviations were minimum or that the Municipal Corporation would compound the deviation on payment of such composition fee as was payable under the law. The issue whether the composition is permissible under the bye-laws was itself a matter in dispute before the Court and not decided by the Court. I did not make the alleged statement that such composition should not be treated as a precedent for others.

Apart from the fact that I did not make such a concession, I must emphasise that it was impossible for me to make such a concession because both as an advocate and as a firm believer in the rule of law as a Member of this august House, I could not have made a concession that the Indian Express could be treated above the law. I could not make a concession that the breaches and unauthorised constructions of Indian Express would be componded against the specific provisions of the bye-laws. I did say that whatever was compoundable under the bye-laws would be compounded. Furthermore, any concession on a point of law to be binding on the client must be in conformity with the law. Such an alleged concession being opposed to law would not bind the Municipal Corporation. Therefore, the oher two Judges have rightly permitted the Municipal Corporation to proceed according to law. I could not make a concession which would expose my client to a charge of a discriminatory treatment by stating that this would not be treated as a precedent in other cases—that for Indian Express we compound and that for Times of India, we do not compound or for a small man, we do not compond. My writ-

ten sub missions filed before the Supreme Court will bear our the facts.

I had written a letter to Shri Maheshwari, Advocate-on-Record of my client stating the correct facts. I had also advised my client, the Municipal Corporation of Delhi, in writing, to file a clarification application which was duly filed by the Municipal Corporation of Delhi in the Supreme Court before the Supreme Court gave a judgement on the review petitions filed by Shri Jagmohan and the Union of India. I have settled this clarification application. While the review petitions of Shri Jagmohan and the Union of India were rejected, this clarification application is still pending.

It is thus clear that I have adopted the very mode which the Judges have said I should have followed.

The Hon'ble Judges overlooked the concept of natural justice—all this would have been clarified had they given me an opportunity before passing the remarks—as has been expressed in Cooper Vs. Wandsworth Board of Works:

> 'The laws of God and man both give the party an opportunity to make his defence, if he has any. I remember to have heard it observed by a very learned man upon such an occasion, that even God himself did not pass sentence upon Adam before he was called upon to make his defence. 'Adam (says God), where art thou? Hast thou not eaten of the tree whereof I commanded thee that thou shouldest not eat?' And the same question was put to Eve also."

Therefore, these rules of natural justice were observed even by God when the forbiden fruit was eaten by Adam and Eve.

Again Justice Megarry has said—from which the hon. Law Minister quoted:

> "It may be that there are some who would decry the importance which the courts attach to the observance of the rules of natural justice. 'When something is obvious', they may say, 'why force everybody to go through the tiresome waste of time involved in framing charges and giving an opportunity to be heard? The result is obvious from the start' Those who take this view do not do themselves justice. As everybody who has anything to do with the law well knows, the path of the law is strewn with examples of open and shut cases which somehow were not of unanswerable charges, which, in the event were completely answered; of inexplicable conduct which was fully explained; of fixed and unalterable determinations that, by discussions, suffered a change. Nor are those with any knowledge of human nature who pause to think for a moment likely to underestimate the feelings of resentment of those who find that a decision against them has been made without their being afforded any opportunity to influence the course of events."

And to come to the latest decision in the case of Olga Tellis, that is the case of the pavement dwellers, this is what Chief Justice Chandrachud, speaking for the Supreme Court says:

> 'The proposition that notice need not be given of a proposed action because there could possibly be no answer to it, is contrary to the well-recognised understanding of the real import of the rule of law."

That proposition overlooks that justice must not only be done but seem to have been done, and confuses one for the other. The appearance of injustice is the denial of justice. Justice has been denied to me.

The Judges seem to have taken an umbrage because the contents of the review petition were published in newspapers. Freedom of press is an essential ingredient of free society. Very often I have myself suffered adverse and thoroughly unjustified publicity in press but that is a small price we pay for preserving freedom of press and living in a free and open society. It is doubtful whether the publication of the pleadings and proceedings before the Court can have a scandalising effect on the Court. The dignity of the court must

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rest on surer footing. In any event, I had nothing to do with the publication of these things.

I have placed the above facts before this august House in humble discharge of my duty as a Member of this House to vindicate its honour because I am an honourable Member of the House, because I am a man of honour, and also of the noble and learned profession to which I belong.

I reiterate that none of the disparaging strictures or remarks passed against me is warranted or justified. I am prepared to pay any price for upholding the rule of law. None of our democratic institutions like the courts, the free press, will survive in our country without the rule of law.

I have been a common man's lawyer. I have tried all through my career to weigh the farthings of my poor clients in their weight of gold in the courts of law. I do not intend to bypass or ignore the authority of the highest court of the land. I have every hope that I will get an opportunity to place these facts before the Supreme Court as well.

श्री सत्य प्रकाश मालवीय: मैं एक जानकारी माननीय सदस्य से चाहता हूं। जो रिमार्क्स सुप्रीम कोर्ट ने किया है मेरी जहां तक जानकारी है कि कोई कोर्ट कोई ऑब्जरवेशन किसी के विरुद्ध करती है अगर कोई उसमें कौंसल रहा है तो उसको एक्सपंक्शन के लिए भी सुप्रीम कोर्ट में एप्लीकेशन दी जा सकती है तो क्या माननीय सदस्य ने सुप्रीम कोर्ट में अपनी ओर से एक्सपंज करने के लिए कोई आवेदन-पत्र दिया है या नहीं दिया है ?

SHRI MURLIDHAR CHANDRAKANT BHANDARE: There is no question of my applying at this stage.

THE VICE-CHAIRMAN (SHRI PAWAN KUMAR BANSAL): You need not answer him.

SHRI MURLIDHAR CHANDRAKANT BHANDARE: The Supreme Court could do it on its own.

THE MINISTER OF STATE IN THE MINISTRY OF LAW AND JUSTICE (SHRI H. R. BHARDWAJ): Mr. Vice-Chairman, we have heard the speeches commencing from Shri Advani's speech. Shri Advani read out my speech which was reported again in his favourite press, the Indian Express, and he said that perhaps the Minister has caused some aspersion on Justice A. P. Sen. Mr. Advani, I may submit to you, so far as I am concerned, I am a practising lawyer and this ministerial position is only a time-gap arrangement. I have yet to go back to the Bar and I know that I have the highest respect for every judge, whether justice Sen or any other Judge of the Supreme Court or High Court or down below. But perhaps your party seems to be interested in using the judges for your political ends. That is the difficulty when we hear you. If it suits your convenience, you use their judgements, if it suits your convenience, you use their structures against lawyers. You must try to appreciate the whole problem in a correct perspective. Kindly remember, in your time when you were a minister, you were one of the informants of the Kissa Kursi Ka case. I was a counsel in that case and it was on your statement that the FIR was recorded against Sanjay Gandhi and V.C. Shukla. We have not stooped down to that level that we will become informants in Sikander Bakt's case. And then, your Law Minister.....(*Interruption*)....The judges of Delhi paraded in the Parliament Street....

SHRI LAL K. ADVANI: Is it relevant?

SHRI H. R. BHARDWAJ: Yes. You said that I am a bad Minister. I must tell you what kind of a Minister you were ....

SHRI LAL K. ADVANI: He mentioned about me. But how does the Law Minister come in?

SHRI H.R. BHARDWAJ: You said I am a bad Minister. You said that you will be the worst Minister. That is why have to point out (*Interruptions*)

THE VICE-CHAIRMAN (SHRI PAWAN KUMAR BANSAL): He is not referring to you specifically.

SHRI LAL K. ADVANI: No; he is referring to the Law Minister.

SHRI H. R. BHARDWAJ: I am telling you about the respect for the judiciary which your party had shown. I am not saying about the Law Minister or anybody else. I am telling you about the system to which you owe allegiance. What was the respect shown to the judiciary by the Janata Government? I am an eye-witness to that incident. Sir, the Judges paraded in Parliament Street. What did the then Law Minister say? He said: "Judges you are like peons.". They had demonstrated again and again against those aspersions cast by the Law Minister then. That is not our standard. We show respect to the judiciary and we mean rsepect to the judiciary even if they are a little harsh on us. That is the tradition which we uphold.

Now, what I said about Mr. Justice Sen was correct and I still maintain that. There was a case in which two sides, two people, were arraigned. One is, according to them, Mr. Jagmohan, the then Lt. Governor, and, according to us according to the genesis of the case, according to the history of the case, the corrupt Minister, the then Works and Housing Minister, who did not follow any rule. If anybody has known Mr. Sikander Bakht in Delhi, nobody would defend his case. See his past. That is why I feel suspicious that he was the person who granted this permission. If a normal person like you or somebody else had granted the parmission, we can understand that there was nothing *mala fide*.

SHRI LAL K. ADVANI: This is not fair, Sir. (*Interruptions*). Is it relevant?

SHRI H. R. BHARDWAJ: You see the genesis. (Interruptions).

SHRI LAL K. ADVANI: I can understand a reference to the judgement itself. But Mr. Sikandar Bakht is maligned in this manner here!

SHRI H.R. BHARDWAJ: Kindly listen to me.

SHRI LAL K. ADVANI: Mr. Sikandar Bakht is not here to defend himself. (*Interruptions*).

SHRI H.R. BHARDWAJ: Mr. Jagmohan also is not here to defend himself. Mr. Advani, you kindly listen to me. (*Interruptions*).

SHRI LAL K. ADVANI: I have not said a word about Mr. Jagmohan apart from what is said in the judgement.

SHRI H. R. BHARDWAJ: Sir, I will request him to kindly listen to me. Mr. Advani should listen to me. I was saying that this is the relevance of the then Works and Housing Minister. The relevance is that the whole case started from his action, and the whole case started from that permission on which Mr. Justice Sen has based his judgment. Shall I tell you the page number? It is 206. It is stated therein that the permis was validly granted and, therefore, it was permissible for him to construct this building and it is where it is said that the Judge, Mr. Sen, has gone in the wrong direction. He should not have upheld the permission granted by Mr. Sikandar Bakht because Mr. Sikandar Bakht is not a good company and Mr. Justice Sen relied on a bad company. That is why I have said this and elsewhere I have told you where the two Judges have not gone into it. You kindly see page 206.

SHRI LAL K. ADVANI: Mr. Justice Sen has said something and he has upheld it. Is it wrong? Is it fair to say that he was wrong just because he has said that the permission was valid? Is it fair in his opinion?

SHRI H. R. BHARDWAJ: Mr. Sen will have no grievance over it, I am telling you. The other two Judges did not support him on this contention. If the other Judges did not support his contention, do you mean to say that they agreed? Do you understand the difference between the judgment of the Court and the judgment of a Judge? (*Interruptions*). I would

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like to read out for your benefit Mr. Babul Reddy. Sir, Mr. Babul Reddy seems to be out of touch because he seems to have ceased practising. Kindly see, and kindly read the judgement.

SHRI P. BABUL REDDY: It does not mean that. With your experience you cannot say that when a Judge says that he does not go into it, he does neither agree *nor disagree*

SHRI H. R. BHARDWAJ: You kindly see, Sir, I want to wipe out this fallacy from their minds that this is not a minority judgment. There is a difference between the judgment of a Judge and the judgment of the Court. You must have the support of the two other Judges. Otherwise, you stand isolated. Kindly see page 206. Even Mr. Justice Sen does not claim what you want us to believe. See page 206. Kindly see. What does he say? He says—see page 206—:

> "For my part, till then I would restrain the Union Government, the Works and Housing Ministry, the Land and Building Officer and other officers from taking any step for the termination of the lease held by petitioner No.1, M|s Express Private Limited for non-payment of conversion charges or otherwise for the construction of the Express Building till the date of termination of such amount to be realised by statutory tribunal or by a civil court. For these reasons, I would, therefore, on my part, "—you see, not on the part of the Court—"quash the impugned order."

These reasons are his own, not the reasons of Justice Venkataramaiah, not the reasons of Justice R.B. Mishra, because it suits you to say that they have been silent on this. Therefore, they support Justice .....

SHRI P. BABUL REDDY: I did not say I support.. (*Interruptions*)

SHRI H. R. BHARDWAJ: Kindly bear with me. The fallacy of your argument is thrown out. On page 3 of his judgment, he has ridiculed that Minister who granted this permission. On page 5 he says:

> "That cannot be decided on just affidavits. These are matters which should be tried in a regular civil proceeding. One should remember..."

And you should also remember this:

> "..that the property belongs to the Union of India and the rights in it cannot be bartered away in accordance with the sweet will of an officer or a Minister or Lt. Governor but they should be dealt with in accordance with the law."

Please remember this. Now, pause here for a moment and see for yourself what your Minister has done. When he was discussing with the Secretary, Land and Building, Works and Housing, he did not discuss as to what is the quantum of the conversion charges. At that time, you kindly bear in mind where your fallacy is exhibited on the basis of this judgment. When a Minister is deciding to dole away a certain part of the property of the Union of India and then he does not decide that conversion charges to the tune of so many crores of rupees will have to be paid, he simply passes an order, without talking about this thing, what else is this except nepotism and favouritism? (*Interruptions*) This is where the fallacy of your argument shows. The other two Justices have not agreed with Justice Sen. He may have his own illusions about the propriety of the action of Mr. Sikander Bakht. But the question is that at that time Mr. Sikander Bakht or anybody was not examined. Only affidavits were tendered in the Supreme Court. And they were examined. Rightly so. The other Judges said: since we did not have the benefit of the evidence of several people involved in this transaction, let these issues be tried in a civil court. What are you going to try in the civil court? What quantum of the charges have to be paid for this conversion, illegal conversion? That has to be tried and determined. But you are not accepting, because Mr. Sikander Bakht, the then Minister, did not go

into it. And there is where my objection lies that when you are deciding about the property of the Union you cannot by whims pass it on to your favourites. Can you deny this that he was your most favourite and continues to be your most favourite to this day. You take money from Mr. Goenka in your politics. He has been guiding your Ministers, not only Mr. Sikander Bakht. Even a child in Delhi knows that you are beholden to him to a great extent. But the question today is this that there is a comparison of two people. One is Mr. Sikander Bakht, the Minister. One is Mr. Jagmohan who came in 1980 as Lt. Governor of Delhi. Now, you are accusing a person who wanted to discharge his duties faithfully and efficiently. You remember, when you were in power in the Municipal Corporation a plea had been raised that locks were broken. You were in the ruling party and you did not allow the Lt. Governor to inspect files of the Corporation. You see that anybody who is interested in doing justice will see that even locks are broken. Why was it done? Because the BJP and the Janata Party who were in power in the Municipal Corporation and even in the Metropolitan Council were not cooperating. He could call for files from the DDA and everywhere under his administration. There is nothing wrong in it if you see something fishy.

The law provides for it. Suppose somebody wants to destroy evidence, you can search the premises even without a search warrant. Exigencies may require such things. The question is, your were not allowing the Lt. Governor even to summan files. This is your objection that on a Sunday he consulted the Commissioner of the Municipal Corporation. What is wrong about it? These days we hold courts on Sundays because the situation so warrants. I am only submitting, Sir, that all these issues have been used by the Opposition Members because they have nothing else to discuss in this House. We never wanted to discuss this judgment in the House. It is they who raised it by a substantive motion. We always said that it was not good to discuss these things. After all, you cannot separate the Judge from his judgment. Can you? You cannot. You say you discuss the judgment and don't name the Judge. That is the misfortune of this case. You have initiated the debate. You insisted on it. We never wanted it. We said that all right, the Judges have allowed, they have quashed the notice, the building has come up and they are enjoying it. What else was there? We have obeyed the orders of the Supreme Court. What else did you want us to do? O.K. Don't enforce these conversion charges. Get it through a tribunal or some civil proceedings. We could have done it. The Corporation has filed a petition for clarification. But the unfortunate aspect is that the moment you catch hold of something which can be of the slightest use to you politically, you say: O.K., Welcome, we will use it. You don't go into the real problems that the country is facing. You are really using some non-issues. I may tell you that you are living under a fallacy that by championing this case, the Judges will go against us. We have very cordial relations with the Judges. That is the difference which I pointed out. I may tell you that we are completely beholden to Justice Sen. We have tremendous respect for him. We have no controversy over this judgement. Nor do we have any controversy with the press. The Judges themselves have said that there is no controversy about article 19 in this case. It is pure and simple a business proposition. Today, you have raised it in this House and the question before it is: "What is the judgment of the Supreme Court?" The judgment of the Supreme Court is like this. Justice A. P. Sen says that this is a politically-motivated and malicious action of Jagmohan. The other Judge says that there was no independent application of mind by the authorities. Who are the authorities? One is the Zonal Engineer, City Zone, and the other is the Engineer Officer of the Land and Building Department. The other Judge, Justice Venkataramiah, says: "Non application of mind and under pressure of Jagmohan these notices were issued. Therefore, they are not valid. We are quashing them. We are not going into the other things". Justice R. B. Mishra even does not say so. He says. "I concur and

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the notices are quashed. They should be determined in a regular civil suit because the affidavit cannot decide the fate of this case." Now, you say that it is a judgment of the court. The difficulty is that Mr. Advani is not a lawyer and he can be ignorant about the procedures and judgment of the court. But Mr. Babul Reddy should have known. He has practised 50 years. No doubt, he has retired now. But please apply your mind again the same way as you had applied earlier.

SHRI P. BABUL REDDY: You know in your hearts of heart that what I said is right and what you are saying is wrong.

(*Interruptions*)

SHRI H. R. BHARDWAJ: The difficulty is that now you have put away your gowns. He confided in me that he has stopped practising. With this judgment of the Supreme Court, only two things were done. They were fully respected and the notices of both these authorities were quashed. After they were quashed, no action has been taken against the Express building nor is one contemplated. We have filed an aplication for direction. In the meantime, the unfortunate incident happened. What Jagmohan has to do after a decision comes? He wants to file a review petition. After the decision comes, he wants to file a review petition. He consults his counsel. The judgment says that several lawyers right from the Attorney General to down below have conceded certain aspects. Is it right or wrong? He was not present when the case was heard. He goes to his counsels. They said that perhaps after the duration of two years, they have not really remembered our submissions. So, we shall seek a review of this petition. What is wrong about it? In a society as ours, we have got freedom of the press and freedom of profession. Freedom of profession is equally important. As Mr. Bhandare just now said, when we appear in courts, we appear with a confidence that the Judges will hear us, the Judges will do justice and justice alone not only to the litigants but to the counsels also. We are a part of the court. No counsel can be divorced away from the proceedings of the court. We have a duty to assist the court independently, fearlessly and in the best interests of our clients. If that is so, they cannot be ignored merely because they said that they felt hesitant to accept that they made these concessions. The reasoning given in the review petition is that affidavits were not filed. Only letters were filed. You hold that a right of review is available against the judgment of the Supreme Court. Can you remember, Sir, the Jagannath Mishra case? They made a somersault later on. There were three Judges. In review, they came to a different conclusion. How can you deny that even the most set case can be opened once the arguments are heard? After all, we are there to assist the court, not to snatch away from the court and senior counsels. It is the Supreme Court who designated Mr. M. C. Bhandare as a senior counsel. So, if he is a senior counsel of a court, he is reliable on all aspects—not only his knowledge but also his integrity and everything. Then only the Supreme Court designated him. And Mr. L. N. Mishra has been the Attorney General of this country. He has been the most learned counsel. That is what I say, Mr. Advani, that on one side you have the Judges and on the other you have the very learned and senior members of the Bar. The problem is not as simple as you see with your jaundiced eyes that it is only the Judges who can speak the truth, not the lawyers. You kindly see. When the lawyer says something, the Judges must appreciate it. A judgment without appreciaition is a nullity. This is an accepted norm in the court. If you do not appreciate the statements of the Counsel, if you do not appreciate the evidence produced in the court, then I am prepared to say that that judgment is a nullity *ab initio*. Therefore, in this review petition if the counsels have agitated that the concessions were not made, it does not amount to contempt of court. You may try to get the members of the Bar. But the reply from the members of the Bar will be the same that we are entitled to be heard. And you cannot be condemned without

being given an opportunity to be heard. This is the basic thing. I do not know how you have forgotten all these things. I am reminding you that everybody who will face a charge will always say, please give me a hearing. But, unfortunately, it is some members of the bar who are facing this situation. If you had been there, you will be facing the same thing.

SHRI LAL K. ADVANI: I am only referring because you said in the . . .

SHRI H. R. BHARDWAJ: I made a point in the other House. You referred to my statement. You did not even care to read my whole speech. You rely only on the 'Indian Express' and nothing else. That is the difficulty with you. I said that 121 was preserved. During the debate, the Members were restrained. The Members did not cast any aspersion on any Judge And Mr. Madhu Dandavate, another senior Member of the Lok Sabha said, "I am very happy." It is on record.

SHRI LAL K. ADVANI: I quoted just one word. I said that the Minister said that the Supreme Court was keen to defend Sikander Bakht. And I have gone through your speech also.

SHRI H. R. BHARDWAJ: No, no. You kindly see every word of my speech. I started with this that I am grateful to the House that the spirit of 121 was preserved. And hat is what was accepted by a very important Member of the Opposition. I do not know how you find fault with that.

SHRI LAL K. ADVANI: I am finding fault with one statement that the Supreme Court was keen to defend Sikander Bakht.

SHRI H. R. BHARDWAJ: No, no I said that Justice Sen is not the Supreme Court. That is your difficulty. He is one-eighteenth of the Supreme Court.

SHRI LAL K. ADVANI: If you said it about Justice Sen, it amounts to the same thing.

SHRI H. R. BHARDWAJ: No, certainly not. What Justice Sen may be saying, the other Judges may not say. It will be a judgement against Justice Sen.

SHRI LAL K. ADVANI: It will be an insinuation against Justice Sen if you say that Justice Sen was keen to defend Sikander Bakht.

SHRI H. R. BHARDWAJ: No, no. My difficulty is that my lawyer can understand me. You cannot understand. You are not trained in that fashion.

SHRI LAL K. ADVANI: I am sure, the whole House has understood. Sir, I stand by this. If he has said that Justice Sen is keen to defend Sikander Bakht, it is an insinuation on the court.

SHRI H. R. BHARDWAJ: I tell you, Mr Advani, that you build up yourself as a politicion and not as a lawyer. I will not give you that credit. You cannot build up as a lawyer. I will tell you frankly. My advice is that you are trained as a politician and remain there. You are brought up in the tradition of a politician.

SHRI LAL K. ADVANI: I am constrained to . . .

SHRI H. R. BHARDWAJ: He is not accepting what a senior lawyer is saying. I have also practised for 25 years. But we will not accept what you say because it is gross misinterpretation of law. I am prepared to.....

SHRI LAL K. ADVANI: Mr. Vice Chairman, Sir, so far as article 121 is concerned, it is not a question of any opinion or his opinion. It is a question whether an insinuation of this kind that Justice Sen was keen to defend Sikander Bakht is a violation or not.

SHRI H. R. BHARDWAJ: No, I have not said so. You are wrong.

SHRI LAL K. ADVANI: If you have not said at....

THE VICE-CHAIRMAN (SHRI PAWAN KUMAR BANSAL): That is not the issue.

SHRI H.R. BHARDWAJ: I never interrupted you because I know that you have no complete knowledge of the law, therefore no use taking any cue from you. I only said that those who do not understand the legal proceedings, the implications of legal proceedings cannot defend as brilliantly as lawyers, as Mr. Babul Reddy said, which we appreciate. I know what I have argued in that House. I said that while deciding this politically motivated notice, Justice Sen seems to have been influenced by Mr. Sikander Bakht more than he should have been influenced, because he is not a reliable man. When you bring the evidence of some witness for consideration, you go into his antecedents. These questions are seen as to what he was doing in the past, whether he was previously convicted, what are his antecedents, what is his credibility. Then only you rely on him under section 156 of the Evidence Act. You impeach the man if he is not reliable. Therefore, it was a wrong man on whose statement Justice Sen's conviction was based and if you can appreciate it well and good. I will not take more time of this hon. House by repeating the same thing. In fact, Justice Sen likes me more than you, frankly speaking. We are very good friedns and we have been on a very good wave-length before and even after the judgment. And tomorrow again we will be together and you do not come in our way.

I told you, Sir, that the whole issue of this discussion has been somehow or the other twisted and an attempt has been made to use the judiciary to our prejudice to use the judiciary to the prejudice of the present Government and our party. That is the misfortune but this is without any foundation. We have all the time said, Sir, that since the action of Mr. Jagmohan is not tainted with any selfish motive as was that of Mr. Sikandar Bakht, we have not thought it fit to take any action because Mr. Jagmohan has acted in the best interests of Delhi as is borne out by what Mr. Khushwant Singh has said. Maybe, temporarily they may not like it but I know that they know the weakness of their case because they know that the building is situated on the road itself. That is why Mr. Jagmohan acted, after becoming the Lt. Governor, swiftly, while the Supreme Court slept over it for two years in giving the judgment. That is the spirit nobody wants fro mthe Lt. Governor. But he has not slept over the matter and he has acted quite efficiently. The speed of the Minister in granting, doling away, the conversion money is equally brilliant. He calls on him and he recides, in spite of the protestations of the Secretary. It was pointed out by Salveji that the Secretary opposed it but the Minister said, nothing doing, you have to do it. Out of the two people, an efficient man, an honest man and a man on the other side, who gave this permission, is not that equally brilliant, honest and credible? When you decide this case, be Solomon, Mr. Advani. Kindly see if you are going to hang Jagmohan, who will work for this country? Everybody will be pressurised like this, screwed up and they will say that even a Minister won't be able to perform his duties if you coerce him with the freedom of the press slogan. We have to work independently. If it erodes the freedom of the press everybody should shout. But if it does not, the court has not said so, but the whole case was based on that, there is no point to defend it. Therefore, I am saying that do not go overzealously in support of the judiciary, which was not protected by you people in 1977—1980, you misused judiciary. (Interruptions). As Bhatiaji has stated... (*Interruptions*). As Bhatiaji has pointed out how circumstances change. How the minds of the judges change? We do not go into it; absolutely not. We take it that this judgement was passed in all fairness; in all fairness on two points; quashing of the notices, and nothing beyond it. Any judge who says that this is a politically motivated judgement, he is certainly wrong because the court does not say so. It is not political. Who was politically insterested in this case except you people? He was your admirer: your supporter, not our supporter. We were not actuated in this

action; the judge has gone into it; other judges have dissented. Therefore, there is no unanimous verdict of the court, and anyone who says it was politically motivated, he remains in minority in this case. Therefore, to appreciate this point correctly, we must come to one conclusion that this action of the opposition in raising the issue in this House was motivated politically because they have no other issue to discuss: they have raised it somehow or other, by hook or by crook, to get sympathy of at least some of the judges. This is the intention of the opposition. But I am again assuring them that we are having tremendous respect for the judiciary and our rapport with judiciary will continue. We will go on serving the rule of the law, the independence of judiciary and also the independence of the Bar, the strength of the Bar. Members of the Bar should not be treated with disrespect. This is also one of our slogans and this is one of our commitments, because the Bar and the judiciary supplement each other's role. Judiciary cannot be strong: what strength 18 judges will have unless they have one or two lakhs of lawyers behind them? We are part of that system we cannot be taken away or shifted away from each other. Inside the court, the judge says to me: "Your argument is nonsense." And I would say: "Perhaps, I am not able to make myself clear to you." I do not say that "You do not understand my point." I always say: "Perhaps, I have not made myself clear." This is the spirit in which we work. And the judges, after hearing the counsels, change their mind in the court itself, because conviction is always obtained from the assistance of the Bar. The judges, whatever they are, are always persuaded: and also certain conviction is obtained by the assistance of the members of the Bar.

So, this issue is not as simple as the hon. Member may think. simply because it has been said that lawyers have not been fair in this review petition. This is a very serious mater. It may erode the very system. the independence of judiciary and the rule of law if a review petition is treated like this. It is very important arrangement in the Supreme Court because there is no other court after the Supreme Court. Every person who is agitated has to file a petition for review, and the one filed in this. Case could not have been treated like this. This is my humble submission before the House and before all the people concerned with this case. So, I hope that this controversy on review petition will be also solved by mutual negotiation, by mutual talks between the Bench and the Bar. We are trying for this. But again,, people like you, will not like that there should be a solution because you want some sort of escalation going on between the judiciary and the Bar, because it suits you.

I may remind one thing. In Shrri Shiv Shankar's time, we gave five District Judges in Delhi because judges would have been promoted; but because of the controversies like this we have not been ... to give five district Judges for Delhi because for their own self-interest they say: No, you are dividing Delhi. I also said on the establishment of Benches; the double talk that these people do; in Allahabad it is something and in Meerut, it is something else. You must learn that they are very clever people. They are trying to use anything that comes their way, short of playing tricks with the people who have rejected them, and it is this frustration which has led them to move such a motion. Thank you.

ANNOUNCEMENT RE: ALLOCATION OF TIME FOR GOVERNMENT LEGISLATIVE AND OTHER BUSINESS

THE VICE-CHAIRMAN (SHRI PAWAN KUMAR BANSAL): I have to inform hon. Members that the Business Advisory Committee at its meeting held today, the 28th November, 1985 allotted time for Government Legislative and other Business as follows: